



MidAmerican Energy  
666 Grand Avenue  
P.O. Box 657  
Des Moines, Iowa 50303-0657

January 28, 2000

Mr. James A. Plores  
Vice President  
**Cordova** Energy Company LLC  
302 South 36<sup>th</sup> Street  
Suite 400  
Omaha, NE 68131-3845

Re: Letter of Intent Regarding Power Sales Agreement

Dear Mr. Flores:

**MidAmerican Energy** Company ("MidAmerican"), an Iowa corporation, is a public utility providing electric service in the states of Iowa, Illinois and **South** Dakota. **Cordova** Energy Company LLC ("Cordova"), a Delaware limited liability company, is an exempt wholesale generator ("**EWG**") as that term is used in Section 32 of the Public Utility Holding Company Act of 1935 ("**PUHCA**"), 15 USC **79z-5a**, and is also an affiliate of **MidAmerican**.

Pursuant to Section 32(k)(2) of **PUHCA**, 15 USC **79z-5a(k)(2)**, **MidAmerican** is not permitted to enter into a contract to purchase electric energy at wholesale from an **EWG** that is an affiliate unless every state commission that has jurisdiction over the retail rates of **MidAmerican** makes certain specific determinations in advance of **MidAmerican** entering such contract (the "**PUHCA PUC Condition**").

**MidAmerican** and **Cordova** have negotiated the terms and conditions of a certain power purchase agreement that is attached hereto (the "**Power Purchase Agreement**") and intend to enter into such Power Purchase Agreement in accordance with the terms of this letter.

**MidAmerican** and **Cordova** each hereby agree that they will execute the Power Purchase Agreement provided the conditions precedent described in Section 9 of Power Purchase Agreement (including, without limitation, the **PUHCA PUC Condition**) are satisfied on or prior to July 20, 2000, or unless the parties mutually agree in writing to terminate this letter of intent.



Mr. James A. Flores  
January 28, 2000  
Page Two

If you are in agreement with the foregoing, please sign and return one copy of this letter to me, which thereupon will constitute our agreement with respect to its subject matter.

Sincerely,

MIDAMERICANENERGYCOMPANY

By: Ronald W. Stepien  
Name Typed: 'Ronald W. Stepien'  
Title: President

Agreed to a&accepted this 28th day of January, 2000.

CORDOVA ENERGY COMPANY LLC

By: James A. Flores  
Name Typed: James A. Flores  
Title: Vice President

Attachment: Power Purchase Agreement

**POWER PURCHASE AGREEMENT**

Between

**CORDOVA ENERGY COMPANY LLC**  
a Delaware limited liability company

and

**MIDAMERICAN ENERGY COMPANY**  
An Iowa corporation

\_\_\_\_\_, 2000

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## POWER PURCHASE AGREEMENT

**THIS POWER PURCHASE AGREEMENT** (“Agreement”) is entered into as of \_\_\_\_\_, 2000 (the “Effective Date”), by and between **CORDOVA ENERGY COMPANY LLC**, a Delaware limited liability company (“Seller”) and **MIDAMERICAN ENERGY COMPANY**, an Iowa corporation (“Buyer”). Buyer and Seller may be individually referred to herein as a “Party” and, collectively, as the “Parties”.

**WHEREAS**, Seller has commenced construction of the Project (as defined below);

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell and make available to Buyer, capacity and energy from the Project, subject to the terms, exceptions and conditions of ~~this~~ Agreement;

WHEREAS, the Parties desire to enter into this Agreement, to set forth their respective rights and obligations in connection with the sale of capacity and energy from Seller to Buyer;

**NOW, THEREFORE**, in consideration of the mutual promises and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Certain Defined Terms.

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below.

“Actual Heat Rate” has the meaning set forth in Exhibit D.

“Additional Fuel Costs” has the meaning set forth in Exhibit D.

“Adjusted Buyer Startup Fuel Quantity” means, with respect to any Startup of a Unit, the sum of (i) the product of (A) the quantity of Fuel actually used for such Startup and ~~(B)~~ 25%; and (ii) the product of (A) the quantity of Fuel actually used for such Startup, ~~(B)~~ 50% and (C) a fraction, the numerator of which is the quantity of Energy scheduled by Buyer from the Project during the continuous period of operation of such Unit and the denominator of which is the total quantity of energy (including Scheduled Energy and Other Customers’ Energy) scheduled for delivery from the Project during such continuous period of operation.

“Affiliate” means any Person that directly or indirectly Controls or is Controlled by or is under common Control with, the Person in question.

**"Aggregate Energy"** has the meaning set forth in Section 5.3(b).

**"Aggregate Energy Demand"** means, with respect to any period of time during the Delivery Term, the total quantity of energy (including Energy Scheduled by Buyer and Other Customers' Energy) scheduled for delivery from the Project during such period of time.

**"Aggregate On Peak Energy"** has the meaning set forth in Section 5.3(a).

**"Alternative Delivery Point"** has the meaning set forth in Section 4.3(c).

**"Alternative Generation"** means (i) any generation from any source other than the Project or (ii) generation from the Project delivered at an Alternative Delivery Point, in each case when the deliveries from the Project to the Delivery Point are interrupted or curtailed.

**"Alternative Generation Fuel Quantity"** means, with respect to any Day, a quantity of gas equal to the product of (i) the quantity of Energy delivered to Buyer from the Project hereunder pursuant to Section 4.3(c) on such Day and (ii) the Actual Heat Rate calculated in accordance with Exhibit D.

**"Annual Availability Factor"** has the meaning set forth in Section 5.3(b).

**"Annual Escalation Factor"** means, (i) for the first Contract Year, one (1), and (ii) for each Contract Year thereafter, the product of 1.025 and the Annual Escalation Factor for the immediately prior Contract Year.

**"Annlicable Capacity"** has the meaning set forth in Section 5.3(a).

**"Applicable Requirements"** means any and all applicable laws, regulations, announcements, codes, directives, judgments, decrees, orders or interpretations of any court, arbitrator or governmental instrumentality and any valid waivers, exemptions, variances, permits, licenses, authorizations, orders, consents or conditions of or from, in any such case, any governmental instrumentality, court or other governmental entity having jurisdiction over the matter in question.

**"Annlicable Schedule"** means, with respect to any time during the Delivery Term, the applicable quantities of Energy Scheduled in accordance with Section 4.2 for each hour of a scheduling period as in effect at such time.

**"Business Day"** means any Day other than a Day that is a Saturday, Sunday or legal holiday in the State of Illinois.

**"Buyer"** means MidAmerican Energy Company, an Iowa corporation.

**“Buyer Auxiliary Boiler Fuel Quantity”** means, with respect to any Day, the product of (i) the quantity of Fuel actually required for the operation of the Project’s auxiliary boiler during such Day and (ii) fifty percent (50%).

**“Buyer Fuel Supply Requirement”** or **“Buyer’s Fuel Supply Requirement”** means, for any Day, the sum, without duplication, of (i) the Buyer Startup Fuel Quantity for each Startup (or portion *thereof*) that occurs during such Day, (ii) each *Buyer* Operating Fuel Quantity for each hour of such Day, (iii) the Buyer Auxiliary Boiler Fuel Quantity for such Day and (iv) the Alternative Generation Fuel Quantity for such Day.

**“Buyer Hourly VOM Charge”** means, with respect to any hour: (i) if the Project does not operate or if Buyer does not schedule the delivery of any Energy during such hour, zero (0); and (ii) if Buyer schedules Energy and the Project operates during such hour, the product of (x) \$533, if one Unit operates during such hour, or \$1,066, if both Units operate during such hour, and (y) a fraction, the numerator of which is the quantity of Energy Scheduled on behalf of Buyer during such hour and the denominator of which is the total quantity of energy (including Energy Scheduled by Buyer and Other Customers’ Energy) scheduled for delivery from the Project during such hour.

**“Buyer Operating Fuel Quantity”** means, with respect to any hour, the product of (i) the quantity of Fuel used for the operation of the Project (other than the Project auxiliary boiler) during such hour and (ii) a fraction, the numerator of which is the Energy scheduled by Buyer and the denominator of which is the total quantity of energy (including Energy scheduled by Buyer and Other Customers’ Energy) scheduled for delivery from the Project during such hour.

**“Buyer Startup Costs”** means, with respect to any Startup of a Unit, (i) if, during the period of continuous operation of a Unit following the Start-Up of such Unit, Buyer does not Schedule the delivery of any Energy from the Project, zero; and (ii) if, during the period of continuous operation of a Unit following the Start-Up of such Unit, Buyer does Schedule any Energy from the Project, the sum of (x) the product of \$2095 and fifty percent (50%) and (y) the product of ~~\$2095~~ and a fraction, the numerator of which is the quantity of Energy Scheduled by Buyer during such continuous period of operation. of the Unit and ~~the denominator~~ of which is the total quantity of energy (including Energy Scheduled by Buyer and Other Customers’ Energy) scheduled for delivery from the Project during such continuous period of operation; provided, however, notwithstanding clause (ii), if, with respect to any Startup, Buyer is the only customer of Seller to schedule energy from the Project during the continuous period of operation of the Project following such Startup, then the ‘Buyer Startup Costs’ with respect to such Startup shall mean \$4190.

**“Buyer Startup Fuel Quantity”** means, with respect to any Startup, the quantity of Fuel actually required; by the Project for such Startup; provided, however, if, at the time of any Startup, any Other Customers’ Energy is scheduled to be delivered from the Project during the period of time that the Project is scheduled to operate continuously following such Startup, (i) such quantity of Fuel shall be equal to the product of (A) the quantity of Fuel necessary for such Startup and (B) fifty percent (50%).



**“Buyer Variable O&M Costs”** means, with respect to any Month, the sum of the following:

- (i) the product of **\$0.40/MWh** times the Contract Quantity (in **MWh**) for such Month;
- (ii) the sum of each Buyer Hourly VOM Charge for each hour of such Month, and
- (iii) **the** sum of each Buyer Startup Costs for each Startup that commences during such Month;

provided, however, with respect to any Month during any Contract Year after the first Contract Year, **“Buyer’s Variable O&M Costs”**, shall be the product of the foregoing sum and the applicable Annual Escalation Factor.

**“Buyer’s Monthly Net Capability”** means, with **respect to** any Month, 50% of the Monthly Net Capability for such Month.

**“Buyer’s Project Capacity”** means, with respect to any time, 50% of the Project Capacity at such time.

**“Calendar: Year”** means a calendar year.

**“Capacity Test”** means a test to determine the Monthly Net Capability of the Project as specified in Exhibit G.

**“Claims”** means all claims or actions filed by a person **other** than a Party, **and** whether groundless, false, or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorney’s fees and court costs, whether incurred by **settlement** or otherwise, and whether such claims or actions are filed prior to or **after** the termination of this Agreement.

**“ComEd Interconnection Agreement”** means an agreement **to** be entered into between Seller and the Commonwealth Edison Company providing for the interconnection of the Project to the Commonwealth Edison Company system, as amended from time to time, and any **replacement agreement**.

**“Commercial Operation Date”** means the **first** calendar day after the latter of (i) the day on which the Project and its component parts have been accepted by Seller as having passed acceptance and **performance** testing for substantial completion pursuant to the EPC Contract, and (ii) the day on which the Project has completed a Uniform Rating of Generation Equipment test pursuant to the MAPP Guides, in each case as designated in a written notice by Seller to Buyer; and (iii) the date: the electrical interconnection between the Project and the transmission system of Buyer has been constructed and placed into service; provided, however, the Commercial

Operation Date shall in no event be prior to June 1, 2001 unless Seller elects a date between May 1, 2001 and May 31, 2001 and agrees that the Guaranteed Payment for such period prior to June 1, 2001 shall be zero.

"Confidential Information" shall mean all written, recorded or oral information furnished to a Party ("Recipient") by the other Party or its Affiliates ("Disclosing Party"), in connection with the Project or this Agreement and designated by the Disclosing Party as confidential, together with all copies, reproductions, summaries, analyses or extracts thereof or based thereon in the possession of Recipient or in the possession of any of Recipient's Representatives. Confidential Information does not include, however, information which (a) is or becomes generally available to the public other than as a result of a disclosure by Recipient or Recipient's Representatives, (b) was available to Recipient in prior written documents on a non-confidential basis prior to its disclosure by the Disclosing Party or (c) becomes available to Recipient on a non-confidential basis from a Person other than the Disclosing Party or its Affiliates who is not otherwise bound by a confidentiality agreement with the Disclosing Party, or is not otherwise prohibited from transmitting the information to Recipient.

"Connectinn Utility" means either or both, as the context so requires, of (i) Commonwealth Edison Company and its successors and (ii) MidAmerican Energy Company and its successors.

"Contract Capacity" means, for each Contract Year, the product of (i) the average of the Monthly Net Capability ratings for each Month of such Contract Year and (ii) fifty percent (50%).

"Contract Quantity" means, with respect to any Month, all of the Energy (in MWh), that Seller sells and delivers, or causes to be delivered, to Buyer pursuant to this Agreement during such Month.

"Contract Term" means the term of this Agreement beginning on the Effective Date of the Agreement and ending on the Termination Date.

"Contract Year" means a twelve-month period commencing on a May 15 after the Commercial Operation Date; provided, however, the first Contract Year shall be the period commencing on the Commercial Operation Date and ending at 2400 CPT on the following May 14 (which May 14 shall in no event be earlier than May 14, 2002).

"Control" means the possession, directly or indirectly, through one or more intermediaries, of either of the following: (a) (i) in the case of a corporation, 50% or more of the outstanding voting securities thereof; (ii) in the case of a limited liability company, partnership, limited partnership or venture, the right to 50% or more of the distributions therefrom (including liquidating distributions); (iii) in the case of a trust or estate, 50% or more of the beneficial interest therein; or (iv) in the case of any other entity, 50% or more of the economic or beneficial interest therein; or (b) in the case of any entity, the power or authority, through the ownership of voting securities, by contract or otherwise, to direct the management, activities or policies of the

entity.

**"CPT"** means the prevailing time on any given Day in Rock Island County, Illinois.

**"Cumulative On Peak Undelivered Energy"** has the meaning set forth in Section 5.3(a).

**"Cumulative Undelivered Energy"** has the meaning set forth in Section 5.3(b).

**"Daily Fuel Costs"** has the meaning set forth in Exhibit D.

**"Day"** means a calendar day.

**"Delivery Point"** means (i) the point of direct electrical interconnection of the Project with the high voltage transmission system of Buyer, and/or the point of direct electrical interconnection of the Project with the high voltage transmission system of Commonwealth Edison Company, as designated by Buyer from time to time, or (ii) any other point mutually agreed upon by Buyer and Seller in writing.

**"Delivery Term"** means the period commencing at the hour ending 0100 CPT on the Commercial Operation Date through and including the hour ending 2400 CPT on the Termination Date.

**"Effective Date"** has the meaning set forth in the introductory paragraph of this Agreement.

**"Energy"** means the electric energy to be delivered by Seller to Buyer pursuant to this Agreement.

**"Energy Imbalance"** has the meaning set forth in Section 4.4.

**"Energy Imbalance Charges"** means the charges assessed by the Connecting Utility or any successor transmission provider (including an RRO), as a result of deviations between energy scheduled and energy delivered or received or between energy delivered and energy received (however named, including, without limitation, "energy imbalances", "oversupply imbalances", or "undersupply imbalances").

**"EPC Contract"** means the contract(s) for the provision to Seller of services for the design, engineering, procurement and construction of the Project, and any replacement contract.

**"EPC Contractor"** means the firm or firms retained by Seller to provide services for the design, engineering, procurement and construction of the Project.

**"Event of Default"** has the meaning set forth in Section 11.1.

**"Excess Energy"** has the meaning set forth in Section 4.8.

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency.

"**Financing Parties**" means the lenders providing construction *or term financing or* refinancing, as ~~the~~ case may be, with respect to the Project (including a leveraged lease), and any trustee or agent acting on their behalf.

"**Fixed Capacity Rate**" means (i) for each Month during the Delivery Term prior to May, 2002, the product of (A) the Monthly Percentage for such Month as set forth below, **(B)** \$7.50 per kW/month; and (C) 12; (ii) for each Month during the Delivery **Term** after May, 2002, \$7.50 per kW/month and (iii) for May 2002, the average of the rate for May determined by using clause (i) above and the rate determined for a month during the Contract Year commencing 2002 by using clause (ii) above.

*Monthly Percentage:*

<u>Month</u>	<u>Percentage</u>
January	3.53%
February	3.46%
March	1.67%
<b>April</b>	1.99%
<b>May</b>	7.85%
June	13.22%
July	28.90%
August	28.75%
September	4.73%
October	2.54%
November	1.72%
December	1.64%

"**Force Maieure**" means any cause beyond the reasonable control and without the fault or negligence of ~~the~~ Party relying on such cause to excuse its performance hereunder (such Party, the "Claiming Party"), whether of the kind enumerated below or otherwise, including without limitation the following: (i) any storm, flood, freeze, hurricane, windstorm, lightning, earthquake or other acts of God, fire, explosion, civil disturbance, strike, lockout, labor dispute, act of the public **enemy**, action of a court, regulatory or other governmental authority (as long as the Claiming Party has not sought, supported, applied for, or assisted in the application for, such regulatory or governmental action), failure to obtain or maintain a governmental permit, license or approval (as long as the applying person has used commercially reasonable efforts to apply for, obtain and maintain such permit, license or approval), the failure of transmission facilities or a constraint on ~~the~~ transmission system for either Connecting Utility that precludes transmission of the Energy to ~~the~~ Delivery Point or from the Delivery Point to the first **available** resale market or (ii) any unavailability or interruption in the supply of breakdown of pipelines, facilities and/or

equipment other than as a result of improper maintenance or the negligence of the Claiming Party; provided, however, that no obligation to make payments for energy delivered or other services rendered shall be excused by the occurrence of an event of Force Majeure; and provided, further, ~~that~~ the following acts, events or causes shall not constitute an event of Force Majeure: (a) the loss of Buyer's resale markets; (b) Buyer's inability economically to use or resell energy or capacity purchased hereunder; (c) any lack of profitability to Seller of the Project; and (d) the failure of or a constraint on transmission facilities except to the extent that the Claiming Party (x) owns and controls such facilities and the capacity thereon, (y) has contracted for ~~firm~~ transmission thereon or (z) would be similarly affected even if it had contracted for firm transmission thereon.

"Fuel" means the natural gas used in the operation of the Project.

"Fuel Delivery Point(s)" means the receipt points for transportation service under the Gas Distribution Agreement, which are the proposed point of interconnection between the LDC's Nitrin line and Northern Border Pipeline Company and the point of interconnection between such Nitrin line and Natural Gas Pipeline Company of America.

"Fuel Index" means, for any day, the Midpoint daily price index for deliveries on such day for the Chicago city gate, large end users, as published in FT Energy's *Gas Daily*. *If the Fuel Index ceases; to exist, becomes unavailable, is not published for a period of at least ten (10) days or is changed so that it is intended to measure something materially different from the average daily prices for gas delivered to large end users at or near the Fuel Delivery Point, the Parties shall negotiate in good faith to agree upon a new index that reasonably measures average daily prices for natural gas delivered to large end users at or near the Fuel Delivery Point. If the Parties do not agree that an alternate index is appropriate or are unable to agree upon an alternate index, within thirty (30) days after a written request by a Party therefor, then a Party may refer the matter to arbitration in accordance with Section 16.9. The arbitrator shall be required to select a replacement alternate index that most reasonably measures average daily prices for gas sold and delivered to large end users at or near the Chicago city gate.*

"Fuel Transportation Charge" means, with respect to any Month, the sum of (i) \$16,500 and (ii) the product of \$.025/MMBtu and Buyer's Fuel Supply Requirement (in MMBtu) for such Month.

"Fuel Savings" has the meaning set forth on Exhibit D.

"Gas Distribution Agreement" means the Fii Natural Gas Distribution Agreement dated as of July 6, 1999, between Seller and MidAmerican Energy Company, an Iowa corporation, as amended and in effect from time to time.

"Guaranteed Heat Rate" has the meaning set forth in Exhibit D.

"Guaranteed Payment" means, for any Month, the product of the applicable Contract Capacity (expressed in kW) and the applicable Fixed Capacity Rate, as such amount may be

adjusted in accordance with Section 5.3; provided, however, if the Commercial Operation Date occurs on a Day other than the first Day of a Month, then the Guaranteed Payment for the Month in which the Commercial Operation Date occurs shall be the product of (i) the Guaranteed Payment calculated in the absence of this proviso and (ii) a fraction, the numerator of which is the number of Days in such Month after the Day prior to the Commercial Operation Date and the denominator of which is the number of Days in the Month.

"Hourly Energy" has the meaning set forth in Section 5.3(b).

"Hourly On Peak Energy" has the meaning set forth in Section 5.3(a).

"Hourly On Peak Undelivered Energy" has the meaning set forth in Section 5.3(a).

"Hourly Undelivered Energy" has the meaning set forth in Section 5.3(b).

"ISO" means any Person (other than the Connecting Utility) that becomes responsible as independent system operator for either or both of the transmission systems to which the Project is connected.

"kW" means kilowatt.

"kWh" means kilowatt-hour.

"Late Payment Rate" means a per annum rate of interest equal to the Prime Rate plus three percent (3%); *provided*, the Late Payment Rate shall never exceed the maximum lawful rate permitted by applicable law.

"LDC" means MidAmerican Energy Company, an Iowa corporation, and its successors.

"MAIN" means the MidAmerican Interconnected Network or its successors, including any ISO responsible for the MidAmerican Interconnected Network or its successors.

"MAPP" means the Mid-Continent Area Power Pool or its successors, including any ISO responsible for the Mid-Continent Area Power Pool or its successors.

"MAPP Guides" means the Regional Reliability Handbook adopted by MAPP and in effect from time to time, or any replacement-document.

"MEC Interconnection Agreement" means the Interconnection Agreement dated as of April 2, 1999, between Seller and MidAmerican Energy Company, as amended from time to time, and any replacement agreement.

"Meter" means any or all, as the case may be, of the meters of the Project and the Connecting Utilities that measure the amount of energy transmitted from the Project to the transmission system of each Connecting Utility.

“Minimum: Load Condition” has the meaning set forth in Section 4.7.

“Month” means a calendar month.

“Monthly Net Capability” has the meaning set forth in Exhibit G.

“MMBtu” means one million British thermal units.

“MNC” has the meaning set forth in Exhibit G.

“MW” means a megawatt. One MW is equal to 1,000 kW.

“MWh” means a megawatt-hour. One MWh is equal to 1,000 kWh.

“NERC” means the North American Electric Reliability Council or its successors.

“Non-Summer Period Guaranteed Payments” means, for any Contract Year, the aggregate Guaranteed Payments payable with respect to September, October, November, December, January, February, March, April and May of such Contract Year (it being understood that such Guaranteed Payments shall be adjusted in accordance with the proviso to the definition of Guaranteed Payments, if applicable).

“On Peak Availability Factor” has the meaning set forth in Section 5.3(a).

“On Peak Hours” means all hours ending 0700 through and including 2200 CPT for each weekday (i.e. Monday through Friday) during the Delivery Term (excluding NERC designated holidays).

“Other Customers’ Energy” means energy scheduled by or delivered to, as the context may require, other: customers of Seller from the Project.

“Party” means either Seller or Buyer and “Parties” means both of Seller and Buyer.

“Person” means an individual, partnership, corporation, limited liability company, association, trust, **unincorporated** organization, or a government authority or agency or political subdivision thereof.

“Pipeline Transportation Agreement” means the gas transportation agreement between Buyer and Northern Border Pipeline Company or any other upstream pipeline delivering Buyer’s Fuel Supply Requirement at the Fuel Delivery Point(s).

“Planned Outage” means any outage of the Project due to inspection, testing, maintenance, repair or overhaul, as scheduled by Seller in accordance with the requirements of Exhibit H.

**“Prime Rate”** means the prime lending rate as may from time to time be published in the *Wall Street Journal* or any successor publication under “Money Rates” or a successor heading, provided that if more than one prime rate is published under such heading, the Prime Rate shall be the average of such rates so published. If the *Wall Street Journal* ceases to be published or if publication is suspended, the Parties shall agree on a successor or publication that reports comparable prime, lending rates.

**“Project”** means the gas-fired combined cycle electrical generation facility proposed to be located in Rock Island County, Illinois, which is further described in Exhibit A.

**“Project Capacity”** means the capacity actually available from the Project to supply energy.

**“Project Constraints”** has the meaning set forth on Exhibit C.

**“Prudent Industry Practice”** means any of the practices, methods, techniques, standards and acts required or approved from time to time by a significant portion of the electric power industry in the geographic region covered by MAPP and MAIN, or any of the practices, methods, techniques, standards, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with the Applicable Requirements, good business practices, reliability, safety, environmental protection, and expedition. “Prudent Industry Practice” is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be practices, methods or acts generally accepted from time to time in the geographic region covered by MAPP and MAIN.

**“Ratings Reaffirmation”** means, with respect to a specified event, a confirmation from Moody’s Investor’s Service, Inc. and Standard and Poor’s Group that a lowering of the then-current ratings of the Cordova Funding Series A Senior Secured Bonds will not result from such event.

**“Replacement Cost”** has the meaning set forth in Section 3.2.

**“Representatives”** of a Person shall mean any Affiliates of such Person and directors, officers, employees, agents or Controlling Persons of such Person or its Affiliates.

**“RRO”** or **“Regional Reliability Organization”** means MAIN, MAPP or any ISO responsible for MAIN or MAPP.

**“Schedule”** or **“Scheduled”** means the acts of Buyer and Seller pursuant to Section 4.2 setting forth a written schedule requesting and accepting the delivery of Energy by Seller to Buyer during the Delivery Term.

**“Scheduled Energy”** means the Energy requested by Buyer pursuant to Sections 4.2(b) or



4.2(e) and accepted by Seller pursuant to Sections 4.2(c) or 4.2(e), as may be altered in accordance with Sections 4.2(e) and (f).

**"Scheduling Fees"** means fees assessed by any Person to schedule the delivery of the Energy.

**"Seller"** means Cordova Energy Company LLC, a Delaware limited liability company.

**"Startup"** or **"Start-Up"** means, with respect to either Unit, a firing of the combustion turbine of such Unit. The period of a Startup of a Unit begins at the commencement of such firing and ends when the Unit's generators are synchronized with the Connecting Utility.

**"Stranded Costs"** means any charges or costs that are assessed or levied by any entity, including local, state or federal regulatory or taxing authorities or any transmission or distribution providers, in order to recoup the expenses and liabilities associated with stranded investments including without limitation any *stranded* costs assessed or levied pursuant to 18 C.F.R. §35.26.

**"Summer Hours"** means, for any Calendar Year, each of the hours between 0600 to 2200 CPT on each weekday (i.e. Monday through Friday) excluding NERC holidays, from June 1 through August 31 of such Calendar Year.

**"Summer Period"** means, for any Contract Year, the period commencing June 1 (or, in the case of the first Contract Year, the first Day of such first Contract Year if such first day occurs during the period after June 1 and before September 1) through August 31 of such Contract Year. If the first Day of the first Contract Year occurs after August 31, there shall be no Summer Period for such first Contract Year.

**"Summer Period Guaranteed Payments"** means, for any Contract Year, the aggregate Guaranteed Payments payable with respect to June, July and August of such Contract Year (it being understood that such Guaranteed Payments shall be adjusted in accordance with the proviso to the definition of Guaranteed Payments, if applicable)+

**"Surcharge Rate"** means \$0.30 per-MWh.

**"Termination Date"** means May 14, 2004 or such earlier date as this Agreement may be terminated as provided for in this Agreement.

**"Total Transmission Services"** means all transmission services, ancillary services, control area services and such other services associated with the transmission of electric energy from one location to another.

**"Transmission Costs"** means all costs associated with line losses, congestion charges, inadvertent energy flows, MAPP and MAIN charges, charges assessed by the applicable Connecting Utility and other applicable system costs or charges associated with the transmission

of electric energy from one location to another.

**"Unit"** means, with **respect** to the Project, (i) either one of the combustion turbine/generator ~~trains~~ and (ii) to the extent utilized in connection with such combustion turbine/generator train, the steam turbine/generator.

**"Unplanned Outage"** means (i) an unplanned component **failure** or other condition that requires the **Project**, or part thereof, to be removed from service immediately or that can be deferred but requires the Project, or part thereof, to be removed from service before the next Planned Outage (or that prevents a Start-Up), (ii) an unplanned deration of the Project that requires an **immediate** reduction of capacity or that can be deferred but requires a reduction of capacity prior to the next Planned Outage, or (iii) any other unplanned interruption or reduction in generation from the Project for any reason.

**"Variable Energy Payment"** means a **monthly** charge equal to the sum of (i) ~~the~~ Fuel Transportation Charge for such Month and (ii) the Buyer Variable O&M **Costs** ~~for~~ such Month.

**1.2 Interpretation.** In this Agreement:

(a) the table of contents, headings, **and** Article and Section numbering **are** for convenience only and shall be ignored in construing this Agreement;

(b) ~~the~~ singular includes the plural and vice versa;

(c) references to Articles, Sections, Recitals, and Exhibits are, unless the context otherwise requires, references to Articles and Sections of, and Recitals and Exhibits to, this Agreement;

(d) the Exhibits to this Agreement form a part of this Agreement;

(e) the words "hereof", "herein"; ~~"hereinafter"~~, "hereunder", "hereby", "hereto", and similar words refer to this entire Agreement and not to any particular Article, Section, Recital, or Exhibit;

(f) if any payment hereunder **is required** to be ~~made~~ On a day **which is not a Business Day**, such payment shall be made on the **next** succeeding Business *Day; provided* that if such next succeeding Business Day is not in the same Month as the date required for payment, such payment shall ~~be made~~ on the immediately preceding Business Day; and

(g) any reference to a time shall be a reference to CPT unless otherwise specified.

**1.3 Rules of Conduct.** In this Agreement:

(a) unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed; and

(b) in carrying out their obligations and duties under this Agreement, each Party shall have an implied obligation of good faith.

## 2. TERM

### 2.1 Term.

(a) Subject to Article 9 hereof, this Agreement is effective from the Effective Date through the Termination Date.

(b) On the Termination Date, the Parties will no longer be bound by this Agreement, except (i) to the extent necessary to enforce any rights or obligations of the Parties arising under this Agreement before the Termination Date, (ii) obligations arising under Section 16.1 and indemnification obligations, which will survive the termination of this Agreement and will continue for two (2) years following the Termination Date, and (iii) rights and obligations arising under Section 12.2, which will survive the termination of this Agreement for a period of one (1) year for the purpose of statements and payment objections.

## 3. PROJECT CONSTRUCTION

3.1 Project Design. Except with the prior consent of Buyer which shall not be unreasonably withheld or delayed, Seller (i) shall cause any design for the Project to conform with Exhibit A hereto and with Prudent Industry Practice and (ii) shall not change the number or design capacity of the Units that, comprise the Project as set forth in Exhibit A. For the avoidance of doubt, Buyer shall not withhold such consent to the extent such changes proposed by Seller would not reasonably be expected to have an adverse effect on Buyer.

### 3.2 Project Delay.

(a) Seller (i) shall use all commercially reasonable efforts to cause the Project (a) to be constructed, (b) to be interconnected to Buyer's transmission system at the Delivery Point and (c) to achieve the Commercial Operation Date, in each case, by June 1, 2001 and (ii) in any event, shall cause the Project (A) to be constructed, (B) to be interconnected to Buyer's transmission system, and (C) to achieve the Commercial Operation Date, in each case, by May 15, 2002 (which dates, for the avoidance of doubt, shall not be extended due to events of Force Majeure); provided, however, the sole and ~~exclusive~~ remedies for any failure of Seller to comply with clause (i) of this sentence shall be ~~that~~, as provided in Article 5, Buyer's obligations to make the payments contemplated by Article 5 do not commence until commencement of the Delivery Term and the sole and exclusive remedies for failure to comply with clause (ii) of this sentence (subject to Section 3.2(b)) shall be that, as provided in Article 5, Buyer's obligations to make the payments contemplated by Article 5 shall not commence until commencement of the

Delivery Term and that Seller shall pay to Buyer the Replacement Cost (as defined below). For purposes of this Section, "Replacement Cost" shall mean an amount equal to the positive difference, if any, obtained by subtracting (i) the sum of the Guaranteed Payments and the Variable Energy Payments that would have been payable to Seller hereunder for the period from May 15, 2002 until the date the Commercial Operation Date occurs had the Project been available and provided capacity and Energy to Buyer in the quantities and at the times at which Buyer purchases substitute capacity and energy in accordance with this Section 3.2 from (ii) the amount at which Buyer, acting in a commercially reasonable manner, pays to purchase capacity and energy to substitute for the capacity and energy that would have been purchased during such time period by Buyer from the Project had the Commercial Operation Date occurred on May 15, 2002 and are not **supplied** from the Project; provided, however, the total Replacement Cost payable by Seller shall in no event exceed 60% of the Guaranteed Payments that would have been payable during the second Contract Year had the Commercial Operation Date occurred on May 15, 2002. For purposes of determining clause (i) above and the proviso above, the Project Capacity and the Monthly Net Capability for each Month shall be assumed to be equal to the MNC for such Month as set forth on Table G-1 in Exhibit G; and the Project shall be assumed to be available each and every **On-Peak** Hour during the Summer Period, at a level equal to 96.5% of such MNC level, and each and every other hour at a level equal to 91% of such **MNC** level. For purposes of determining clause (ii) above, the substitute capacity and energy obtained by Buyer shall be deemed not to exceed at any time those levels that could have been produced by the Project consistent with clauses (i) and (ii) above.

(b) If one of the milestones set forth below does not occur by the date set forth opposite such milestone below (which dates shall not be extended due to delays in achievement of such milestones due to events of Force Majeure), Buyer shall, during the 30-day period following the date opposite such milestone, have the option to terminate this Agreement by providing ninety (90) Days' prior written notice to Seller, which termination shall not be effective if the applicable milestone is achieved by the end of such ninety (90) Day period.

Milestone

Date

Delivery of gas turbines, steam turbine  
and heat recovery steam generators to site

July 31, 2002

First fire of combustion turbines

October 1, 2002

Commercial Operation Date

March 1, 2003

Additionally, (i) if the Commercial Operation Date has not occurred by October 31, 2001, Buyer may by written notice delivered to Seller no later than November 5, 2001, terminate this Agreement effective as of the end of May 14, 2002, or (ii) if the Commercial Operation Date has not occurred by October 31, 2002, Buyer may by written notice delivered to Seller no later than November 5, 2002, terminate this Agreement effective as of the end of May 14, 2003. Buyer's rights to terminate this Agreement under this Section 3.2(b) shall be, except as expressly

provided in Section 3.2(a), Buyer's sole and exclusive remedy for Seller's failure to timely achieve any of the milestones set forth in this Section 3.2(b).

(c) Seller: shall provide Buyer with monthly reports regarding the then current status of progress of the construction, commissioning and testing of the Project, the then estimated current Project schedule for achieving the Commercial Operation Date (it being understood that any such estimates made in good faith are not guaranteed by Seller and Seller **shall** not be liable for any failure of such estimates to prove to be correct), any events or circumstances that have caused such schedule to be changed from prior reports, and other information related to the status of the construction of the Project as Buyer may reasonably request.

### **3.3 Intentionally Omitted.**

### **3.4 Fuel Supply.**

(a) Throughout the Delivery Term, Buyer shall, at all times and at no cost to Seller, deliver and make available, or cause to be delivered and made available to Seller, each Day, the Buyer Fuel Supply Requirement in accordance with the following terms:

(i) Buyer shall provide Fuel that meets the quality specifications as set forth on Exhibit B.

(ii) Buyer shall deliver the Fuel to Seller at the Fuel Delivery Point(s); provided, however, Buyer shall not at any time deliver more Fuel at the Natural Gas Pipeline Company Fuel Delivery Point than fifty percent (50%) of the quantity of Fuel Seller is then entitled to receive at the Natural Gas Pipeline Company Fuel Delivery Point under the Gas Distribution Agreement, unless Seller otherwise agrees. Buyer shall deliver any portion of the Buyer's Fuel Supply Requirement not so delivered at the Natural Gas Pipeline Company Fuel Delivery Point at the Northern Border Pipeline Company Fuel Delivery Point.

(iii) Buyer shall deliver the Fuel at the Fuel Delivery Point(s) at times and at rates of flow that conform to those necessary to permit the LDC under the Gas Distribution Agreement to re-deliver such Fuel to the Project at a rate of flow that matches the Fuel consumption requirements of the Project to provide Scheduled Energy to Buyer hereunder while permitting Seller to comply with the scheduling and balancing requirements applicable to Seller, and while Buyer is permitted to take advantage of "Buyer's share" of the scheduling and balancing flexibility available, under the Gas Distribution Agreement. As used above, "Buyer's share" of scheduling and balancing flexibility means the scheduling and balancing provisions, and the flexibility provided thereunder, of the Gas Distribution Agreement, applied as if the Fuel provided by Buyer hereunder were the only Fuel provided at the Fuel Delivery Point(s) and delivered under the Gas Distribution Agreement, it being the intent of the Parties that Buyer will not be required to assist with respect to balancing for Fuel provided for the Project by other Persons or that other Persons providing Fuel for the Project will be required to assist with

respect to balancing for Fuel provided for the Project by Buyer.

(iv) For the avoidance of doubt, Buyer's Fuel Supply Requirement includes the Fuel required for associated Project parasitic loads and Fuel retention under the Gas Distribution Agreement that is associated with the Fuel supplied and delivered by Buyer hereunder.:

(b) Title to the Fuel made available to Seller by Buyer hereunder and the risk of loss of such Fuel ~~shall remain~~ with Buyer but Seller shall be entitled to use such Fuel at the Project or for Fuel retention under the Gas Distribution Agreement.

(c) Buyer ~~shall~~ be responsible for arranging for, and paying the cost of, any necessary transportation to the Fuel Delivery Point(s) of Buyer's Fuel Supply Requirement. Seller shall be responsible for arranging for, and paying the cost of, the transportation of such Fuel from the Fuel Delivery Point(s) to the Project.

(d) Each Party shall cooperate reasonably with the other Party to coordinate the supply and transportation of Fuel for the Project with the operation of the Project (i) by providing the other Party such information as the first Party shall reasonably request relating to the supply and transportation of the Fuel to the Project and the consumption of Fuel by the Project (in each case, on both an historical and estimated future basis) **and** (ii) by maintaining personnel available at all times to address scheduling of Fuel supply and transportation and to timely provide the information contemplated by clause (i). By 5:00 a.m. of each Business Day, Buyer shall submit an expected schedule of Fuel to be delivered at each Fuel Delivery Point during the 30-hour period commencing at 6:00 a.m. on the same Day (and, if the next Day is not a Business Day, during each Day through the next Business Day), to the extent a similar obligation is required of Seller required by the Gas Distribution Agreement, and shall provide such other Fuel scheduling information *on* a timely basis as is reasonably required for *Seller* to comply with *its* scheduling obligations ~~under the~~ Gas Distribution Agreement. Seller shall promptly communicate proposed Fuel scheduling changes from Buyer to ~~the~~ LDC for the purpose of reconciling the scheduling of such transportation under the Gas Distribution Agreement with Buyer's proposed Fuel scheduling changes. As soon as practicable after an ~~event occurs~~ that *may necessitate* the need for a change to the scheduling of Fuel to be delivered by Buyer hereunder or the transportation of such Fuel under the Gas Distribution Agreement, the knowledgeable Party shall notify the other, via telephone, of such event and any changes or potential changes that such Party may require to such schedule(s) 'as a result. Buyer shall ~~submit all necessary changes to the schedule(s)~~ for delivery of Fuel by Buyer in accordance with the requirements of the suppliers and transporters (other than ~~under the~~ Gas Distribution Agreement), as applicable, within the hour in which Buyer receives notice of or actual or deemed knowledge of an event that requires a change to the schedule for any reason, including to avoid incurring imbalance penalties or charges. For purposes of this Section, Buyer shall be deemed to have immediate knowledge of any interruption in the generation of the Project if Buyer installs communication equipment pursuant to Section 4.5(d).

(e) Intentionally Omitted.

(f) Buyer and Seller shall cooperate to maintain and resolve imbalances within the permissible tolerances under the Gas Distribution Agreement, and to manage any cash-outs by the LDC for monthly imbalances associated with Buyer's Fuel Supply Requirement and the provision by Buyer thereof. Buyer shall reimburse Seller, within twenty (20) Days of receipt of a written invoice therefor, for all scheduling or balancing fees or penalties imposed on Seller pursuant to the Gas Distribution Agreement (other than monthly cash-outs under the Gas Distribution Agreement, which shall be covered by Section 3.4(g)) to the extent that such fees or penalties are caused by (i) the failure of Buyer to deliver Fuel in accordance with the schedules provided by Buyer to Seller in accordance with this Section 3.4, (ii) the failure of Buyer to comply with the requirements of this Section 3.4 or (iii) the failure of Buyer to Schedule or take Energy hereunder in accordance with the requirements of this Agreement. Seller shall bear any other scheduling or balancing fees or charges incurred on the LDC under the Gas Distribution Agreement (other than monthly cash-outs under the Gas Distribution Agreement, which shall be covered by Section 3.4(g)). Without duplication of amounts payable by Seller to the LDC under the Gas Distribution Agreement, Seller shall reimburse Buyer, within twenty (20) Days of receipt of a written invoice therefor, for all scheduling and balancing fees or penalties imposed on Buyer pursuant to the Pipeline Transportation Agreement or by any pipelines upstream of the LDC utilized to deliver Buyer's Fuel Supply Requirement to the extent that such fees or penalties are caused by (i) the failure of Seller to operate the Project in accordance with Energy properly scheduled by Buyer pursuant to Section 4.2 or (ii) the failure of Seller to nominate Buyer's Fuel Supply Requirements to the LDC in accordance with this Agreement. Buyer shall bear any other scheduling or balancing fees or penalties incurred under the Pipeline Transportation Agreement or on any pipelines upstream of the LDC utilized to deliver Buyer's Fuel Supply Requirement.

(g) At the end of each Month during the Delivery Term, Seller shall calculate the cumulative monthly imbalance on the LDC with respect to Fuel provided by Buyer hereunder, utilizing the methodology applicable for calculating monthly imbalances under the provisions of the Gas Distribution Agreement (including the applicable provisions of the LDC's natural gas tariff on file with the Illinois Commerce Commission incorporated into the Gas Distribution Agreement), but calculated in a manner as if the Fuel provided by Buyer were the only Fuel delivered under the Gas Distribution Agreement or in such other manner no less favorable to Buyer as the Parties may mutually agree. Seller shall make a payment to Buyer; if such imbalance is positive, and, Buyer shall make a payment to Seller, if such imbalance is negative, in each case valued at the applicable cash-out price for positive or negative (as applicable) monthly imbalances under the Gas Distribution Agreement (including the applicable provisions of the LDC's natural gas tariff on file with the Illinois Commerce Commission incorporated into the Gas Distribution Agreement). For purposes of determining Buyer's obligation to provide Buyer's Fuel Supply Requirement, positive imbalances that are so cashed out for a Month shall be deemed not delivered so that Buyer shall not be entitled to rely on the provision of such imbalances to cover any portion of its obligation to provide Buyer's Fuel Supply Requirement in a subsequent Month.

(h) To the extent that Buyer fails to provide Buyer's Fuel Supply Requirement with

respect to any Energy Scheduled by Buyer hereunder in accordance with this Agreement, in addition to any other remedies Seller may have, (i) Seller may (but shall not be obligated to) obtain the necessary Fuel and charge Buyer the cost of obtaining such Fuel and transporting it to the Fuel **Delivery Point(s)** or (ii) if Seller does not so obtain the necessary Fuel, Seller shall be excused from delivering such Energy to Buyer and, solely for purposes of Section 5.3, Energy not delivered for **which** Seller is so excused shall be deemed to have been delivered to Buyer.

(i) At the end of each Month during the Delivery Term, Seller shall (i) recalculate Buyer Start-Up Fuel Quantity with respect to each Start-Up of a **Unit** during such Month by allocating to Buyer a portion of the Fuel requirements associated with such Start-Up in accordance with the methodology for allocating Start-Up costs set forth in the definition of Adjusted Buyer Start-Up Fuel Quantity; (ii) determine, for each Start-Up in such Month, the product of (A) such recalculated amount minus the amount of Buyer's Start-Up Fuel Quantity calculated in accordance with the definition thereof and (B) the sum of the Fuel Index per **MMBtu** for deliveries on the Day of such Start-Up plus \$.015 per **MMBtu**; and (iii) determine the sum of the amounts in clause (ii) for all Start-Ups in such Month. If the sum in clause (iii) is a negative number, Seller shall credit Buyer's invoice for such Month by such amount and if the sum in clause (iii) is a positive number, Seller shall add such amount to Buyer's invoice for such Month and such amount shall be payable by Buyer to Seller.

#### **4. DELIVERY OF ENERGY AND CAPACITY**

##### **4.1 Obligation to Sell and Purchase.**

(a) Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Scheduled Energy.

(b) Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and make available, and Buyer shall purchase, Buyer's Project Capacity.

##### **4.2 Scheduling.**

(a) Seller shall, by 4:00 a.m. CPT each Day, inform Buyer of (i) the estimated availability of the Project to supply Energy to Buyer during each hour of the remaining portion of such Day commencing three (3) hours after such deadline and (ii) provisionally, for the Day immediately thereafter. Seller shall advise Buyer as soon as possible of any changes in the estimated availability of the Project for such Days. These estimates shall not be binding upon Seller and Seller may subsequently revise its estimates.

(b) No later than 10:00 a.m. CPT on each Business Day, Buyer shall deliver to Seller a written statement setting forth the quantity of Energy that Buyer requests Seller to deliver during each hour of the immediately following Day at each applicable Delivery Point. Buyer's written statement may request the delivery of Energy from the Project subject to the Project Constraints.



(c) Seller shall be obligated to accept a request for Energy that has been provided to Seller in accordance with the requirements of Section 4.2(b) except to the extent (i) such request does not comply' with the Project Constraints or (ii) Seller declares that the Project is not available as a result of a Planned Outage, Unplanned Outage or event of Force Majeure. Notwithstanding the foregoing, Seller shall not be obligated to **Startup** the Project if doing so is not within the Project Constraints.

(d) Buyer shall submit all necessary schedules and changes to such schedules to the Connecting Utility and/or the RRO, as applicable, for the Scheduled Energy in accordance with the requirements of the Connecting Utility and/or the RRO, as applicable. Notwithstanding any other provision hereof, Seller shall not be obligated to schedule or deliver Energy to the extent restricted in accordance with the terms of the Applicable Requirements or the terms of the MEC Interconnection Agreement, **ComEd** Interconnection Agreement, or agreement with the RRO, as applicable.

(e) Buyer may request changes to the Applicable Schedule that are within the Project Constraints and the requirements of the Connecting Utility and the RRO, as applicable; provided, however, that, in addition to any other payments due hereunder, Buyer shall reimburse Seller for all its additional costs incurred by the Project in connection with any such changes, including, without limitation, Energy Imbalance Charges or gas supply or transportation scheduling or imbalance charges or penalties arising out of such change. Seller shall be obligated to accept a request for a change to the Applicable Schedule for Energy that has been provided to Seller in accordance with the requirements of Section 4.2(b) except to the extent (i) such request is not consistent with the Project Constraints, or (ii) Seller declares that the Project is not available. Notwithstanding the foregoing, Seller shall not be obligated to Startup the Project if doing so is not within the Project Constraints. Buyer shall submit changes to the Applicable Schedule to the Connecting Utility and/or **RRO** in accordance with the requirements of the Connecting Utility and/or RRO, as applicable.

(f) As soon as possible after an event occurs that may necessitate a change to the Applicable Schedule, each Party shall notify the other, via telephone and confirmed in writing, of such event and any changes or potential changes that such Party may require to the Applicable Schedule as a result. If Buyer receives notice of or actual or deemed knowledge of an Unplanned Outage or other event that requires a change to the then Applicable Schedule for any reason, **including** to avoid incurring Energy Imbalance Charges, Buyer shall immediately submit **all** necessary changes to the Applicable Schedule. 'and with the applicable Connecting Utility or **RRO** in accordance with the requirements of the Connecting Utility and/or RRO, as applicable. For purposes of 'this Section, Buyer shall be deemed to have immediate knowledge of any interruption in the generation of the Project if Buyer installs communication equipment pursuant to Section 4.5(d). In the event of an Unplanned Outage, the parties shall communicate to determine the impact of such Unplanned Outage on Seller's ability to meet the Applicable Schedule and Seller shall cooperate reasonably with Buyer to permit deliveries of Energy to resume or increase at the time the Project resumes or increases operation following the Unplanned Outage.

(g) (I) This Section 4.2(g)(I) shall apply when both Units are available. Seller shall not reject a request for Energy from Buyer under Section 4.2(b) because of the failure of the energy ~~scheduled from~~ the Project to satisfy the Minimum Load Requirement, if, at the time of the initial **establishment** of Applicable Schedule pursuant to Sections 4.2(b) and (c) with respect to any Day, Buyer's request is for an amount of Energy that would by itself satisfy the Minimum Load Requirement with respect to a Unit, regardless of whether or not the proposed schedules of Seller's other customer(s) would satisfy the Minimum Load Requirement with respect to the other Unit. Seller **shall** not be obligated to accept a request for Energy from Buyer under Section 4.2(b), if at the time of the initial establishment of Applicable Schedule pursuant to Sections 4.2(b) and (c) with respect to any Day, Buyer's request is for an amount that would not by itself satisfy the Minimum Load Requirement with respect to a Unit and the proposed schedules of Seller's other customer(s) would satisfy the Minimum Load Requirement with respect to a Unit; **provided, however**, Seller shall provide notice to Buyer of this condition and Buyer shall be permitted to promptly revise its proposed schedule as necessary to satisfy the Minimum Load Requirement with respect to the other Unit.

(2) Seller shall not reject a request for Energy from Buyer under Section 4.2(b) because of the Minimum Load Requirement, if, at the time of the initial establishment of the Applicable Schedule pursuant to Sections 4.2(b) and (c) with respect to any Day, Buyer's request is for an amount of Energy that is less than the Minimum Load Requirement for a Unit for any hour, but the aggregate amount of energy requested from the Project for such hour by Buyer and Seller's other customer(s) would together satisfy the Minimum Load Requirement for each Unit required to be operated to serve such aggregate amount of energy.

(h) To the extent that the availability of the Project is reduced by a Planned Outage, Unplanned Outage or event of Force Majeure, then Buyer shall have the right to request up to 50% of the Project Capacity then available (but no more than Buyer's Project Capacity); provided that Seller shall have the right to utilize such capacity, to the extent unutilized by Buyer, to meet Seller's commitments to its other customers. This Section 4.2(h) shall be subject to any contrary method of allocating available capacity during a Planned Outage, Unplanned Outage or event of Force Majeure as the Parties may agree in writing, it being understood that neither Party need agree to a contrary method unless satisfactory to it in its sole discretion.

(i) Buyer shall pay all Scheduling Fees charged by any third parties, if any, associated with the scheduling of Energy for its benefit. No Scheduling Fees will be charged to Buyer by Seller hereunder:

(j) If requested by Seller, Buyer shall cooperate reasonably to attempt to establish additional scheduling and operating procedures for implementation of this Agreement.

### **4.3 Delivery Point.**

(a) Except as provided in Section 4.3(c) below, all deliveries and receipts of Energy shall be made at the Delivery Point.

(b) Buyer shall arrange for and provide all Total Transmission Services and pay all Transmission Costs necessary to receive the Energy at, and deliver the Energy from and after, the Delivery Point.

(c) In the event of a Planned Outage, Unplanned Outage or an event of Force Majeure that impairs the ability of Seller to deliver Scheduled Energy, Seller may deliver Energy to Buyer from either (i) Alternative Generation to the Delivery Point or (ii) if approved by Buyer, Alternative Generation to any point of receipt within the control area of either Connecting Utility (the "Alternative Delivery Point") as replacement for the Energy that would otherwise be provided by the Project. In the event Seller so elects to provide Energy, Seller shall arrange for and provide all Total Transmission Services and pay all Transmission Costs necessary to deliver the Energy to the Delivery Point or Alternative Delivery Point, as applicable, and Buyer shall arrange for and **provide** all Total Transmission Services and pay all Transmission Costs necessary to re-deliver it to any other location from and after the Alternative Delivery Point.

#### 4.4 **Energy Imbalance.**

If either Buyer or Seller becomes aware that actual hourly deliveries or receipts of Energy hereunder are greater or less than the hourly quantity of Scheduled Energy (any such discrepancy, an "Energy Imbalance"), the Party on notice shall immediately notify the other Party. If actual deliveries of energy are greater or less than the Scheduled Energy, the Parties shall work together to perform corrective action to eliminate (i) the then current Energy Imbalance as soon as possible and (ii) the cumulative Energy Imbalance within the earlier of thirty (30) days and such other period of time in which the applicable Connecting Utility requires such cumulative imbalances to be corrected. Seller shall pay all Energy Imbalance Charges resulting from Seller's failure to deliver Scheduled Energy for any hour; provided, however, that Seller, shall not be obligated to pay any Energy Imbalance Charges resulting from Buyer's failure to timely submit the Applicable Schedule pursuant to Section 4.2(d) or timely submit changes thereto pursuant to Sections 4.2(e) or 4.2(f), and all such resultant Energy Imbalance Charges shall be paid by Buyer. Buyer shall also pay all other Energy Imbalance Charges including Energy Imbalance charges resulting from. the failure of Buyer to. provide. Fuel as required hereunder, the failure by Buyer to schedule the transmission of Energy on the Connecting Utility in a manner that conforms to the Energy Scheduled hereunder, the failure of Buyer to receive Energy in a manner that conforms to the Energy Scheduled hereunder, the failure of any other Persons to take the Energy from Buyer in a manner that conforms to the Energy Scheduled by Buyer hereunder or the failure of Buyer or of any customer of Buyer to receive Energy from the Connecting Utility in a manner that conforms to the Energy Scheduled hereunder (in each case, as adjusted for line losses if applicable).

#### 4.5 **Measurement.**

(a) All Energy delivered by Seller to Buyer from the Project shall be metered at the Meter. For purposes of determining the Scheduled Energy delivered by Seller to Buyer hereunder, measurement of all Energy delivered by Seller from the Project shall be based on

readings of the Meter. Billings for all Energy delivered by or on behalf of Seller from Alternative Generation shall be based on metering information provided by the transmission provider delivering the Alternative Generation to the Delivery Point or Alternate Delivery Point, as the case **may** be. Scheduled Energy shall be deemed to be sold and delivered by Seller hereunder to Buyer if provided by Seller at the Delivery Point or the Alternative Delivery Point whether or not Buyer takes such Energy at the Delivery Point or Alternative Delivery Point.

(b) Seller shall request each Connecting Utility to maintain, calibrate, test and read their respective meters in a manner consistent with the **MEC** Interconnection Agreement or the **ComEd** Interconnection Agreement, as applicable. Seller and Buyer may agree on other metering procedures consistent with the MEC Interconnection Agreement and the **ComEd** Interconnection Agreement.

(c) If for any reason any Meter is out of service or out of repair so that the amount of Energy **delivered cannot** be ascertained or computed from readings thereof, the Energy delivered during the period of such outage shall be estimated by Seller upon the basis of the best data available.

(d) Buyer may, at its expense, construct, install, own and maintain communications equipment to allow real-time measurement of the Project's operating parameters and transmission of such information to Buyer's operation center(s).

#### **4.6 Title. Risk of Loss and Indemnity.**

As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any destruction of property or injury to persons caused thereby) of the Energy prior to delivery to the Delivery Point or the Alternative Delivery Point, as the case may be, and Buyer shall be deemed to be in exclusive control (and responsible for any destruction of property or injury to persons caused thereby) of the Energy at and after the Delivery Point or the Alternative Delivery Point, as the case may be. Each Party shall indemnify, defend and hold harmless (to the extent permitted by law) the other Party from any Claims arising from any such destruction or injury for which: such Party is responsible under the immediately **preceding sentence**. Seller warrants that the Scheduled Energy delivered by Seller shall be free and clear of all liens, claims and encumbrances arising prior to the Delivery Point or the Alternative Delivery Point, as the case may be. Title to and risk of loss related to the Scheduled Energy shall transfer from Seller to Buyer upon delivery of the Scheduled Energy at the **Delivery Point** or the Alternative Delivery Point, as the case may be.

#### **4.7 Minimum Load.**

Seller shall notify Buyer in writing promptly after Seller receives a request for Energy in accordance with the requirements of Section 4.2(b) if Seller will not accept all or any portion of such request for Energy because satisfying the Aggregate Energy Demand during any period of time covered by the request for Energy would require a Unit to operate at less than its "Minimum Load Requirement" as provided for in Exhibit C (a "Minimum Load Condition"). If Seller

delivers such notice to Buyer, pursuant to Section 4.2(e), Buyer shall be entitled to modify its request for Energy by delivery of a written notice to Seller to increase the amount of Energy requested for the period of time when a Minimum Load Condition would otherwise exist to the extent necessary to eliminate such Minimum Load Condition; provided that Buyer's request for Energy, as so modified, must comply with the Project Constraints. If Buyer so schedules **Energy**, then Buyer shall purchase and *receive* such Scheduled Energy pursuant to the terms of this Agreement. Buyer's right to receive and purchase Energy under this Section in amounts in excess of the Buyer's Project Capacity shall be subject to curtailment or interruption upon three (3) hours prior notice to the extent that Seller schedules a higher level of energy output with or on behalf of other **Persons**. In addition to any other charge payable hereunder, Buyer shall pay to Seller for Scheduled Energy in amounts in excess of the Buyer's Project Capacity pursuant to this Section 4.7 a monthly amount equal to the product of the quantity of Energy delivered in amounts in excess of Buyer's Project Capacity pursuant to this Section 4.7 during such Month and the **Surcharge Rate**.

#### **4.8 Excess Energy.**

To the extent that, during any time period during the Delivery Term, Buyer Schedules less than the Buyer's Project Capacity, Seller shall be entitled to use the remaining portion of such Buyer's Project Capacity for other purposes, including, without limitation, the sale of energy to other customers (the energy delivered by Seller to such other customers using such portion of Buyer's Project Capacity, "Excess Energy"). Subject to the other provisions of this Agreement limiting Buyer's rights to Schedule Energy or change the level of Scheduled Energy, such portion of Buyer's Project Capacity shall be available to Buyer no later than two (2) hours after requested by Buyer in accordance with Section 4.2(e); provided, however, to the extent such portion of Buyer's Project Capacity has been used by Seller to deliver energy to another customer of Seller which energy was scheduled by such customer in excess of its contract capacity in order to satisfy the Minimum Load Requirement for the Project, such capacity shall be available to Buyer no later than five (5) hours after requested by Buyer in accordance with Section 4.2(e). If, with respect to any Month during the Delivery Term, Seller delivers energy to another customer, in excess of its contract capacity in order to satisfy the Minimum Load Requirement for the Project as contemplated by the foregoing proviso, Seller shall pay to Buyer an amount equal to the product of the quantity of energy so delivered using a portion of Buyer's Project Capacity as contemplated by such proviso during such Month and the Surcharge Rate.

### **5. PAYMENTS**

#### **5.1 Guaranteed Pavment.**

Buyer shall pay the Guaranteed Payment to Seller for each Month during the Delivery Term. The Guaranteed Payment shall be due monthly in arrears pursuant to Article 12 throughout the Delivery Term whether or not Buyer actually **takes** any Energy under this Agreement.

#### **5.2 Energy Pavment.**

Buyer shall pay to Seller each Month during the Delivery Term the Variable Energy Payment. The Variable Energy Payment shall be payable in arrears pursuant to Article 12.

### 5.3 Availability Requirements.

(a) For each Summer Period during the Delivery Term, Seller shall maintain an On Peak Availability Factor of at least 96.5% in accordance with this Section 5.3(a). The On Peak Availability Factor shall be determined for any Summer Period by dividing (i) the difference between the Aggregate On Peak Energy minus the Cumulative On Peak Undelivered Energy by (ii) the Aggregate On Peak Energy. The On-Peak Availability Factor shall be expressed as a percentage, which shall be deemed in no event to exceed one hundred percent (100%).

WHERE:

"Aggregate On Peak Energy" means, for any Summer Period, the sum of the Hourly On Peak Energy for each On Peak Hour of such Summer Period.

"Hourly On Peak Energy" means, for any On Peak Hour of a Summer Period, the product of the Applicable Capacity for such hour times one hour.

"Applicable Capacity" means, for any Day, the applicable Buyer's Monthly Net Capability adjusted for the actual peak ambient temperature on such Day in accordance with Exhibit G.

"Hourly On Peak Undelivered Energy" means, for any On Peak Hour of a Summer Period, the sum, without duplication, of (i) the Energy in MWh Scheduled by Buyer in accordance with Section 4.2 and not delivered by Seller during such hour and (ii) any Energy in MWh not Scheduled by Buyer to the extent Seller has declared such Energy to be unavailable during such hour: in accordance with clause (ii) of the first sentence of Section 4.2(a). For the avoidance of doubt, any Energy not delivered by Seller because of a breach by Buyer of its obligations under this Agreement shall not be counted in determining the foregoing sum.

"Cumulative On Peak Undelivered Energy" means, for any Summer Period, the sum of the Hourly On Peak Undelivered Energy for each On Peak Hour of such Summer Period.

Notwithstanding the foregoing, there shall be excluded for purposes of calculating the On Peak Availability Factor, each On Peak Hour of the Summer Period for which any event of Force Majeure (up to twenty-five (25) Days per occurrence of such an event):

(i) adversely affected the Project's production or delivery of Scheduled Energy during such hour; or

(ii) resulted in Seller declaring any Energy to be unavailable in accordance with clause (ii) of the first sentence of Section 4.2(a).

At the end of the Summer Period, Seller shall pay to Buyer, as Buyer's sole and exclusive remedy for any failure of Seller to maintain an On Peak Availability Factor of at least 96.5% during such Summer Period, a rebate in an amount equal to the product of (i) 96.5% minus the On Peak Availability Factor, (ii) **66%**, and (iii) the amount of the Summer Period Guaranteed Payments for such Summer Period. If the On Peak Availability Factor exceeds 96.5% during any such **Summer Period**, Buyer at the end of such Summer Period, shall pay to Seller a bonus in an amount equal to the product of (i) the On Peak Availability Factor minus **96.5%**, (ii) **66%**, and (iii) the amount of the Summer Period Guaranteed Payments for such Summer Period.

(b) For each Contract Year during the Delivery Term, Seller shall maintain an **Annual Availability Factor** of at least 95.5% in accordance with this Section **5.3(b)**. The Annual Availability Factor shall be determined, for each Contract Year, by dividing (i) the difference between the Aggregate Energy minus the Cumulative Undelivered Energy by (ii) the Aggregate Energy. The Annual Availability Factor shall be expressed as a percentage, which shall be deemed in no event to exceed one hundred percent (100%).

WHERE;

"**Aggregate Energy**" means, for any Contract Year, the sum of the Hourly Energy for each hour of such Contract Year.

"**Hourly Energy**" means, for any hour, the product of the Applicable Capacity for such hour times one hour.

"**Hourly Undelivered Energy**" means, for any hour, the sum, without duplication, of (i) the Energy in **MWh** Scheduled by Buyer in accordance with Section 4.2 and not delivered by Seller during such hour and (ii) any Energy in **MWh** not Scheduled by Buyer to the extent Seller has declared such **Energy** to be unavailable during such hour in accordance with the clause (ii) of the **first sentence** of Section 4.2(a). For the avoidance of doubt, any Energy not delivered by Seller because of a breach by Buyer of its obligations under this Agreement shall not be counted in determining the foregoing sum.

"**Cumulative Undelivered Energy**" means, for any Contract Year, the sum of the Hourly Undelivered Energy for each hour of such Contract Year.

Notwithstanding the foregoing, there shall be excluded for purposes of calculating the Annual Availability Factor, each hour in which Planned Outages occur (except to the extent described in Exhibit H) and each hour that satisfies both of the following requirements for which any event of Force Majeure (up to twenty-five (25) Days per occurrence of such an event):

- (i) adversely affected the Project's production or delivery of Scheduled Energy during such hour; or
- (ii) resulted in Seller declaring any Energy to be unavailable in accordance

with clause (ii) of the **first** sentence of Section 4.2(a).

At the end of the Contract Year, Seller shall pay to Buyer, as Buyer's sole and exclusive remedy for any **failure** of Seller to maintain an **Annual** Peak Availability Factor of at least 95.5% during such Contract Year, a rebate in an amount equal to the product of (i) 95.5% minus the Annual Availability Factor (ii) 22% and (iii) the Non-Summer Guaranteed Payments for such Contract Year; provided, however, if the Annual Availability Factor is less than eighty percent **(80%)**, then the rebate shall be increased by an amount equal to the product of (x) eighty percent (80%) minus the Annual Availability Factor, (y) 24% and (z) the Non-Summer Period Guaranteed Payments for such Contract Year. If the Annual Availability Factor exceeds **95.5%**, during any Contract Year, Buyer at the end of such Contract Year, shall pay to Seller a bonus in an amount equal to the product of (i) the Annual Availability Factor minus 95.5% (ii) 22% and (iii) the Non-Summer Period Guaranteed Payments for such Contract Year.

(c) For purposes of calculating the On Peak Availability Factor and the Annual Availability Factor, Alternative Generation provided by Seller shall be counted for purposes of determining whether any rebate provided by this Section 5.3 is payable by Seller to Buyer, but shall not be counted for purposes of determining whether any bonus provided by this Section 5.3 is payable by Buyer to Seller.

## **6. INTENTIONALLY OMITTED**

## **7. REPRESENTATIONS AND WARRANTIES**

### **7.1 Representations and Warranties.**

As a material inducement to entering into this Agreement, each Party with respect to itself, hereby represents and warrants to the other Party as follows:

(a) it is duly organized, validly exist&g and, in good standing under the **laws of** the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement;

(b) the execution, delivery and performance of this Agreement are within its corporate or limited liability company powers, as the case may be, and have been duly authorized by all necessary corporate or limited liability company action, as the case may be;

(c) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally, and the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity; and



(d) there are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending or being contemplated by it, or to its knowledge threatened against it.

## **7.2 No Other Representations and Warranties.**

Each Party acknowledges that it has not entered into this Agreement based upon representations and warranties other than the express representations and warranties set forth in this Agreement.

## **8. COVENANTS**

**8.1 Remaking; of Representations and Warranties.** Each Party covenants that it will cause its respective representations and warranties in Section 7.1 (a) through (c) to remain true and correct throughout the Contract Term.

**8.2 Professional Operations.** Each Party shall employ, either directly or indirectly, professional personnel who are fully capable of performing the tasks of such Party under Sections 3.4(d), 3.4(f), 4.2, 4.3(c) and 4.4 of this Agreement on a 24-hour per Day, 7-Day per week basis.

**8.3 Operation: of the Project.** Seller shall use all commercially reasonable efforts to operate and maintain the Project consistent with Prudent Industry Practice. Seller shall obtain and maintain insurance in accordance with the requirements of Exhibit I hereto. Seller shall not amend the Gas Distribution Agreement, ComEd Interconnection Agreement, or MEC Interconnection Agreement in such a manner that would have a material adverse effect on Buyer without obtaining Buyer's written consent.

**8.4 Confidentiality.** Any Confidential Information is disclosed in confidence, and the transferee shall restrict its use of such information solely to uses related to the development, construction, ownership, financing, operation or disposition of the Project, the purchase, sale or resale of the Project capacity and Energy hereunder or the performance of this Agreement. Neither the transferee nor any consultant or other person to whom any Confidential Information is provided in connection with the Project or performance of this Contract shall publish or otherwise disclose such information to others or use such information for any purpose except as expressly provided above without the written approval of the transferor; provided, however, that nothing herein shall limit (i) the right of Seller to provide any Confidential Information regarding this Agreement to any Financing Entity (or advisors retained on their behalf) or their successors and assigns, or (ii) the right of either Party to supply such information to any governmental authority asserting a right to such information, or as may be required by Applicable Requirements.

**8.5 MAPP/MAIN.** Seller and Buyer may become members of either or both of MAPP or MAIN at their election.

**8.6 Cooperation.** Buyer shall cooperate in good faith with and provide reasonable assistance

to Seller and its Affiliates in providing information to actual or prospective Financing Parties for the Project, and cooperate in good faith with Seller and its Affiliates to obtain financing or re-financing for the Project. In connection therewith, Buyer shall enter into a consent to Seller's assignment of this Agreement to the Financing Parties and such other agreements, instruments, opinions, and documents as Seller or the Financing Parties may reasonably request in connection with such financing or re-financing.

**8.7 Planned Outages.** Seller shall schedule Planned Outages in accordance with Exhibit H.

**8.8 Sales for #Resale.** Buyer shall sell or otherwise dispose of the capacity and Energy actually purchased by Buyer hereunder in a manner that causes the sale of the capacity and Energy by Seller: to Buyer hereunder to be "sales for resale" in accordance with the Federal Power Act and applicable FERC regulations.

**8.9 Operating Committee.** An "Operating Committee" shall be established by the Parties to oversee the implementation of the transaction as provided below. The membership of the Operating Committee shall be comprised of two (2) individuals, one of which shall be appointed by Seller and ~~one~~ of which shall be appointed by Buyer. Either Party may appoint one or more individuals to serve as alternates to the member appointed by such Party and one of such Party's alternate(s) shall; have the powers and duties of such Party's member on the Operating Committee during the absence of the Party's member. The Operating Committee shall meet at such times as the ~~members~~ may mutually agree. Meetings may be in person or by telephone or video conference call. The members may agree to have other representatives of the Parties at the meetings. The Operating Committee shall be responsible for only such matters as both Parties shall mutually agree in writing. No proceedings or decisions of the Operating Committee shall be binding upon either Party unless mutually agreed to in writing by the Operating Committee members of both Parties expressly acting in their capacity as members of the Operating Committee.

## **9. CONDITIONS PRECEDENT**

**9.1 Seller's Conditions Precedent.** Notwithstanding any other provisions of this Agreement, the effectiveness of this Agreement (other than Sections 3.2(c), 8.4, 8.6, 9, 10, 11, 13, 14, 15 and 16) is subject to the satisfaction, or the waiver (other than the waiver of any of the requirements of Exhibit J) by Seller, of the following conditions precedent:

(a) the receipt by Seller and ~~Buyer of all necessary governmental approvals~~ for the Agreement to become effective and for the Parties to perform their respective obligations hereunder (including, without limitation, the filing by Seller of this Agreement with the FERC and the acceptance by the FERC of this Agreement and the receipt by Buyer of the governmental approvals set forth in Exhibit J); and

(b)(i) Seller shall have received a Ratings Reaffirmation in connection with this Agreement and the exercise by Seller of rights to call back Project capacity from its other customer(s) for use in connection with this Agreement or (ii) Seller shall have notified Buyer in

writing that no such Ratings Reaffirmation is required under the agreements entered into by Seller and Cordova Funding Corporation for the financing of the Project.

**9.2 Buyer's Condition Precedent.** Notwithstanding any other provision of this Agreement, the effectiveness of this Agreement (other than Sections 3.2(c), 8.4, 8.6, 9, 10, 11, 13, 14, 15 and 16) is subject to the satisfaction, or the written waiver (other than the waiver of any of the requirements of Exhibit J) by Buyer, of the following conditions precedent:

(a) the receipt by Seller and Buyer of all necessary governmental approvals for the Agreement to become effective and for the Parties to perform their respective obligations hereunder (including the filing by Seller of this Agreement with the FERC and the acceptance by the FERC of this Agreement) and the receipt by Buyer of the governmental approvals set forth in Exhibit J); and

(b) Seller shall not have received from MAPP a determination that Buyer's Project Capacity will not be accredited as a result of a term or condition in the Agreement.

**9.3 Notification.** Each Party shall promptly (but in no event later than ten (10) Days after a condition is satisfied) notify the other Party in writing of such first Party's satisfaction of each condition precedent above. Seller and Buyer each shall use reasonable efforts to satisfy the conditions precedent applicable to it, and shall cooperate reasonably with the other Party in such other Party's efforts to satisfy its conditions precedent; provided, however, neither Party shall be required to agree to any amendment, modification or waiver of any provision of this Agreement or to agree to any other condition, term, obligation or requirement with respect to any governmental approval or Ratings Reaffirmation unless such Party in its sole discretion is willing to do so.

**9.4 Effectiveness.** Notwithstanding anything herein to contrary, this Agreement shall be deemed not effective and null and void in the event the approvals set forth in Exhibit J are not obtained by July 20, 2000 or such later date as the Parties may mutually agree in writing but in no event later than the Day prior to Commercial Operation Date.

## **10. TERMINATION**

If the Parties have not satisfied or waived their respective conditions precedent set forth in Sections 9.1 and 9.2 and notified the other Party thereof, by July 20, 2000, this Agreement shall automatically terminate without cost or penalty to either Party, unless such date is extended or waived by written agreement of both Parties.

## **11. EVENTS OF DEFAULT AND REMEDIES**

**11.1 Event of Default.** An "Event of Default" shall mean:

(a) the failure of the defaulting Party to make, when due, any payment required under this Agreement if such failure is not remedied within five (5) Business Days after written notice

of such failure is given to the defaulting Party by the other Party; or

(b) any material representation or warranty made by the defaulting Party in this Agreement **shall** prove to have been false or misleading in any material respect when made; or

(c) the material breach by the defaulting Party of any covenant set forth in this Agreement (other than (i) any event that is otherwise specifically covered in this Section 11.1 as a separate Event of Default and (ii) the breach of such Party's obligations, as applicable, to achieve the Commercial Operation Date or to deliver Energy, the sole and exclusive remedies for which are provided in Sections 3.2 or 5.3, as applicable), and such failure is not cured within thirty (30) Days after written notice thereof to the defaulting Party or, if the breach or default is not of the type that can be reasonably cured within thirty (30) Days, within a reasonable period of time, so long as the defaulting Party has commenced to cure the breach or default within such thirty (30) Day period and thereafter diligently pursues such cure to completion within one hundred eighty (180) days; or

(d) the defaulting Party shall:

(i) make an assignment or any general arrangement for the benefit of creditors;

(ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such petition is not withdrawn or dismissed within sixty (60) Days after such filing;

(iii) otherwise become **bankrupt** or insolvent (however evidenced); or

(iv) be unable to pay its debts as they **fall** due.

## **11.2 Remedies Upon an Event of Default.**

(a) Upon the occurrence and during the continuation of any Event of Default, the Party not in default shall have the right:

(i) to terminate this Agreement upon ten (10) Days' written notice to the defaulting Party; or

(ii) to pursue any other remedy (A) provided under this Agreement or (B) subject to Sections 11.3 and 14.2, now or hereafter existing at law.

(b) Notwithstanding any other provision of this Agreement, a Party's damages **shall** not include any Stranded Costs.

## **11.3 Acknowledgment of the Parties.**

(a) Each Party hereby stipulates that the payment obligations set forth in Section 5.3 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages and each Party hereby waives the right to contest such payments as an unreasonable penalty. The remedy set forth in Sections 3.2 and 5.3, as the case may be, shall be the sole and exclusive remedy of the aggrieved Party for Seller's failure to meet the Commercial Operation Date, Seller's failure to meet the other milestones set forth in Section 3.2, and the failure of Seller to sell and deliver the Scheduled Energy, respectively, and all other damages and remedies therefor are hereby waived.

(b) In the event either Party fails to pay amounts in accordance with the terms of this Agreement when due, the aggrieved Party (a) shall have the right to suspend performance until such amounts plus interest at the Late Payment Rate have been paid, and/or (b) shall be entitled to interest at the Late Payment Rate from the date due until the date paid.

#### **11.4 Other Events.**

In the event that Buyer is regulated by a federal, state or local regulatory body, and such body shall disallow recovery of all or any portion of any costs incurred or yet to be incurred by Buyer under any provision of this Agreement, such action shall not operate to excuse Buyer from performance of any obligation nor shall such action give rise to any right of Buyer to any refund or retroactive adjustment of the amounts owed under the Agreement.

### **12. BILLING AND PAYMENT**

#### **12.1 Billing and Payment.**

Seller shall render to Buyer (by regular mail, facsimile or other acceptable means pursuant to Section 16.1) for each Month during the Delivery Term a statement setting forth the Guaranteed Payment for such Month, the Variable Energy Payment for the Month and any other charges due Seller, including payments or credits between the Parties pursuant to Sections 3.4(f), 4.3(c), 4.4 and 5.3 during the preceding Month, and the amounts due to Seller from Buyer therefor. If Seller is missing any relevant information at the time Seller prepares a regular monthly invoice, then Seller may separately invoice Buyer for any affected payment or amount in a supplemental invoice or subsequent regular invoice upon receipt of the relevant information. On or before twenty (20) Days after receipt of Seller's statement, or if such Day is not a Business Day, on the Day provided in Section 1.2(f), Buyer shall render, by wire transfer, the amount set forth on such statement to the payment address provided in Exhibit F hereto. Overdue payments shall accrue interest from, and including, the due date to, but excluding, the date of payment at the Late Payment Rate.

#### **12.2 Audit.**

Each Party (and its Representatives) has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to

verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of Energy delivered at the Delivery Point or the Alternative Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be promptly made and shall bear interest calculated at the Late Payment Rate from the date the overpayment or underpayment was made until paid; *provided*, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to: the lapse of one year from the rendition thereof.

### **13. ASSIGNMENT; BINDING EFFECT**

#### **13.1 Assignment.**

Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the ~~prior~~ written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party **may**, without the need for consent from the other Party (and without relieving itself of its obligations hereunder), **(i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; or (ii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, however, that in each such case other than clause (i), (x) the assignee shall make representations to the other Party identical to those under Section 7.1, and (y) the assignee shall agree in writing to be bound by the terms and conditions of this Agreement.**

#### **13.2 Binding Effect.**

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No assignment or transfer permitted hereunder shall relieve Seller or Buyer of any of their respective obligations under this Agreement.

### **14. FORCE MAJEURE AND LIMITATION OF LIABILITY**

#### **14.1 Force Majeure.**

If either Party is rendered **unable** by Force Majeure to carry out, in whole or in part, its obligations under this Agreement and such Party *gives notice* and full details of the *event* to the other Party as soon as practicable after **the occurrence of the event, the obligations of the Party** affected by the event (other than the obligation to make payments due under this Agreement) shall be suspended to the extent so affected. The Party affected by the Force Majeure shall use commercially reasonable efforts to continue to perform its obligations under this Agreement and remedy its inability to perform; *provided*, however, that this provision shall not require Seller to deliver, or **Buyer to receive**, Energy at points other than the Delivery Point or, if elected by Seller in accordance with Section 4.3(c), an Alternative Delivery Point. Nothing in this Section 14.1 shall require the settlement of any strike, walkout, lockout or other labor dispute on terms that, in the sole judgment of the Party involved in the dispute, are contrary to that Party's interest. It is

understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

#### **14.2 Limitation of Remedies, Liability and Damages.**

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN STATED TO BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### **14.3 Duty to Mitigate.**

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

### **15. TAXES; STRANDED COSTS**

#### **15.1 General.**

Buyer and Seller shall each use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with their intent to minimize taxes, so long as neither Party is materially adversely affected by such efforts. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of tax. Either Party with knowledge of a tax on the purchase or sale of energy that may be applicable to the Energy sold hereunder shall notify the other Party, in advance, of the applicability of such tax and shall also notify the other Party of any proposal to implement a new tax or apply an existing tax to the purchase, sale, delivery, or receipt of Energy hereunder.

## **15.2 Applicable Taxes.**

Seller shall be responsible for all existing and any new sale, use, energy, excise, gross receipts, ad valorem, and any other similar taxes, imposed or levied by any federal, state or local governmental agency on or with respect to the Energy sold and delivered hereunder prior to the Delivery Point or the Alternative Delivery Point, as the case may be. Buyer shall be responsible for all existing and any new sale, use, energy, excise, gross receipts, ad valorem, and any other taxes, imposed or levied by any federal, state or local governmental agency on the Energy sold and delivered hereunder at or after the Delivery Point or the Alternative Delivery Point, as the case may be. If Seller is required to collect or pay any tax levied at the Delivery Point or the Alternative Delivery Point, as the case may be, on behalf of Buyer as a result of the sales transaction contemplated in this Agreement (including, but not limited to, any sales, use, utility or gross receipts tax, or any tax of a similar nature), Buyer shall reimburse that tax to Seller. Neither Party shall be required to pay, or cause to be paid, any taxes measured by the income of the other Party. Each Party shall indemnify (to the extent permitted by law), release, defend and hold harmless the other Party from and against any and all liability for (i) taxes measured by the income of the indemnifying Party and (ii) taxes imposed or assessed by any taxing authority with respect to the Energy sold, delivered and received hereunder that are the responsibility of the Party pursuant to this Section 15.2.

## **15.3 Stranded Costs.**

Notwithstanding any other provision in this Agreement to the contrary, in performance of this Agreement neither Party shall be required to bear, directly or indirectly, any Stranded Costs (including, without limitation, any transmission surcharges, taxes, etc.) incurred by the other Party or any customer or supplier of the other Party or any other Person, or that are assessed or levied by any Person against the other Party.

## **16. MISCELLANEOUS**

### **16.1 Notices.**

Any notice, request, demand or other communication required or permitted to be given under this Agreement shall be in writing (unless otherwise provided herein) and shall be deemed to have been duly given and received (i) at the time of service, if served personally, (ii) one half hour after the time of confirmation of transmission if sent via facsimile transmission and written confirmation is received, (iii) on the day after delivery to a courier for overnight delivery, with delivery fees prepaid, or (iv) on the fifth day after mailing when deposited in the United States Mail (registered or certified receipt requested) postage prepaid by first class mail, in each case to the addresses or facsimile numbers, as applicable, specified in Exhibit F. Notices permitted to be delivered via telephone under this Agreement shall be deemed to be received at the time the phone conversation takes place using the phone numbers specified in Exhibit F. The Party delivering notice via telephone shall provide the other Party with a written statement regarding the subject matter of such telephone notice on the Business Day following the date such



telephonic notice was provided.

#### **16.2 Entirety.**

This Agreement and the Exhibits hereto constitute the entire agreement between the Parties related to the subject matter hereof and supercedes all prior agreements covering such subject. There ~~are~~ no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. Except for any matters which, in accordance with the express provisions of this Agreement, may be resolved by verbal agreement between the Parties, no amendment, modification or change herein shall be enforceable unless reduced to writing and ~~executed~~ by both Parties. For the avoidance of doubt, this Agreement **does not** supercede the Gas Distribution Agreement, the MEC Interconnection Agreement or any ~~agreements~~ for the transmission of energy, the construction of facilities or the transfer or use of real estate rights, all of which remain in full force and effect.

#### **16.3 Governing Law.**

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.

#### **16.4 Non-Waiver.**

No waiver by any Party hereto of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

#### **16.5 Severability.**

Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory ~~agency or jurisdiction over the Parties,~~ or ~~deemed unlawful~~ because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement. ~~In~~ such circumstances, the Parties agree to negotiate in good faith to restore the agreement as near as possible to the original intent and effect.

#### **16.6 Headings; Exhibits.**

The headings used for the sections and articles herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement. Any and all Exhibits referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

#### **16.7 No Third Party Beneficiaries.**

Nothing in this Agreement shall provide any benefit to any third party or entitle any third

party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

### **16.8 Counterparts.**

This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

### **16.9 Arbitration.**

ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BREACH THEREOF SHALL BE SETTLED BY ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA") IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES, AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. WITHIN FIFTEEN (15) DAYS AFTER EITHER PARTY HAS PROVIDED NOTICE TO THE OTHER THAT IT IS INVOKING ARBITRATION WITH RESPECT TO ANY CONTROVERSY OR CLAIM HEREUNDER, BUYER AND SELLER SHALL MUTUALLY AGREE ON THE SELECTION OF AN ARBITRATOR, AND IF THE PARTIES HAVE NOT SO AGREED WITHIN SUCH FIFTEEN (15) DAY PERIOD, THEN THE ARBITRATOR SHALL BE SELECTED UNDER THE EXPEDHED RULES OF THE AAA. ANY ARBITRATION SHALL BE COMPLETED WITHIN ONE HUNDRED TWENTY (120) DAYS AFTER EITHER PARTY FIRST DELIVERS NOTICE TO THE OTHER PARTY OF THE COMMENCEMENT OF SUCH ARBITRATION (SUCH ONE HUNDRED TWENTY (120) DAY PERIOD, THE "ARBITRATION PERIOD"), AND THE ARBITRATOR SHALL AGREE TO COMPLY WITH THIS SCHEDULE BEFORE ACCEPTING APPOINTMENT; PROVIDED, HOWEVER, THAT THIS TIME LIMIT MAY BE EXTENDED BY WRITTEN AGREEMENT OF THE PARTIES. ANY ARBITRATION SHALL BE HELD IN DES MOINES, IOWA IN A LOCATION MUTUALLY AGREEABLE TO THE PARTIES. ANY ARBITRATION SHALL BE CONDUCTED ACCORDING TO THE FOLLOWING: (A) NOT LATER THAN SEVEN (7) DAYS PRIOR TO THE HEARING DATE SET BY THE ARBITRATOR EACH PARTY SHALL SUBMIT A BRIEF TO THE OTHER PARTY AND TO THE ARBITRATOR, (B) THE HEARING, AND ALL MATTERS RELATED THERETO, SHALL BE CONDUCTED ON A CONFIDENTIAL BASIS WITHOUT CONTINUANCE OR ADJOURNMENT, (C) EACH PARTY SHALL BE RESPONSIBLE FOR ITS OWN EXPENSES AND THOSE OF ITS COUNSEL AND REPRESENTATIVES, AND (D) NO OFFER MAY BE MADE OF THE DETAILS OF ANY SETTLEMENT NEGOTIATION RELATED TO THE ARBITRATION OR THE COST TO THE PARTIES OF THEIR REPRESENTATIVES AND COUNSEL. THE PARTIES SHALL BE ENTITLED TO DISCOVERY AS PERMITTED BY THE FEDERAL RULES OF CIVIL PROCEDURE; PROVIDED, HOWEVER, THAT THE ARBITRATOR SHALL ADJUST THE TIME PERIODS PROVIDED FOR SUCH DISCOVERY IN ORDER TO COMPLETE THE ARBITRATION WITHIN THE ARBITRATION PERIOD; PROVIDED, FURTHER, THAT EACH PARTY SHALL BE LIMITED TO A MAXIMUM OF FIVE (5) DEPOSITIONS, WITH ADDITIONAL DEPOSITIONS ALLOWED ONLY WITH THE PERMISSION OF THE ARBITRATOR AND FOR GOOD CAUSE SHOWN. EACH DEPOSITION SHALL BE LIMITED TO A MAXIMUM OF ONE DAY.

### **16.10 Acknowledgment of Arbitration.**

EACH PARTY UNDERSTANDS THAT THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE WITH RESPECT TO ANY DISPUTE PERTAINING TO THIS AGREEMENT. AFTER SIGNING

THIS AGREEMENT, EACH PARTY UNDERSTANDS THAT IT WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE HEREUNDER. INSTEAD, EACH PARTY AGREES TO SUBMIT ANY SUCH DISPUTE TO AN IMPARTIAL ARBITRATOR. IN THE ABSENCE OF MANIFEST ERROR, THE FINAL ARBITRATION AWARD SHALL BE BINDING UPON THE PARTIES AND SHALL BE FINAL AND NONAPPEALABLE.

**16.11 Further Assurances.** The Parties shall execute such additional documents, and shall cause such additional action to be taken as may be required or, in the reasonable judgment of any Party, may be necessary or desirable, to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, each' of Buyer and Seller has caused this Agreement to be duly executed on its behalf as of the date first above written.

**CORDOVA ENERGY COMPANY LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIDAMERICAN ENERGY COMPANY, an**  
Iowa corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO POWER PURCHASE AGREEMENT]

## **EXHIBIT A**

### **PROJECT DESCRIPTION**

The Project is proposed to be located in Rock Island County, at 12712 192<sup>nd</sup> Avenue North, **Cordova**, Illinois 61242. The Project is designed to be a gas-fired, combined cycle plant containing two combustion turbines, two heat recovery steam generators, and a steam turbine-generator. The Project design includes the following major components:

A. Combustion Turbines-Two new Siemens-Westinghouse **501FD** combustion turbines with natural gas firing, steam power augmentation and inlet air cooling.

B. Heat Recovery Steam Generators (**HRSGs**) -- Two new Deltak HRSGs. Supplemental duct **firing** will not be included in the design. Each HRSG is designed to supply high-pressure steam to the steam turbine at a sliding pressure between 1200 psia and 1800 psia and at 1050 degrees F. The Project design includes Selective Catalytic Reduction modules to limit NOX emissions from the Project.

C. Steam Turbine -The single new Toshiba steam turbine will be a condensing turbine of approximately 180 MW (gross) with its own lube and control oil systems. The Project design provides that the steam turbine receives its steam from the **HRSGs**.

D. Generators -The Project design provides that the Project's generators are to be new, totally enclosed water to air cooled, 3600 rpm, **18kV**, three phase, **60Hz** design.

E. Auxiliaries-Auxiliary equipment and facilities to support the operation of the Project including a cooling tower, auxiliary boiler, water treatment equipment and discharge line, fire protection, back-up power equipment, control and communication systems and HVAC systems.

F. Transmission Interconnection -The Project is designed to be **interconnected** at 345 **kV** to both the **Commonwealth** Edison Company and **MidAmerican** Energy Company transmission systems at or in the vicinity of the site of the Project.

G. Gas Interconnection -The Project is designed to connect to the LDC gas distribution system Nitrin line.

H. Site -The Project design leaves room at the site for the installation of additional units and related facilities. For purposes of this Agreement, any such additional **units** and related facilities are not part of **the** Project.

I. Capacity-The Project is designed to have a Project Capacity of at least 510 MW at the time of substantial completion under the EPC Contract and at least 537 MW at the time of **final** completion under the EPC Contract, in each case at 59 degrees Fahrenheit and 60% relative humidity.

J. **Design** – The Project is designed to have an operating life in **normal** commercial operation of not **less** than twenty (20) years following the Commercial Operation Date.

**EXHIBIT B**  
**FUEL SPECIFICATIONS**

Natural gas meeting the natural gas quality requirements in effect from time to time to transport such **natural** gas under the tariff of Northern Border Pipeline Company or Natural Gas Pipeline Company of America, whichever such pipeline is delivering the gas to the **LDC**.

## **EXHIBIT C**

### **PROJECT CONSTRAINTS**

The Project Constraints are the actual operational constraints of the Project while being operated in accordance with Prudent Industry Practice and Applicable Requirements including, without limitation, minimum load levels, maximum capacity, maximum ramp rates (up or down), minimum time required for start-up and the constraints on the ability to obtain and to change fuel supply and **transportation** as set forth in the fuel supply and transportation agreements for the Project.

Set forth below is a description of the Project Constraints based upon the initial design of the Project. Seller shall provide a revised Exhibit C containing a more detailed description of the Project Constraints **following** completion of final design by the EPC Contractor. Thereafter, Seller shall deliver to Buyer a **revised** Exhibit C if it becomes aware that there has been a material change to the Project Constraints. During the Delivery Term, the Project Constraints shall be those described in the Exhibit C then in effect unless and until superceded by a revised Exhibit C delivered by Seller in accordance with the immediately prior sentence. Seller shall use reasonable efforts to cause the actual Project Constraints to be no more restrictive than those set forth on this Exhibit C.

1. **Minimum Load Requirements.** As used herein, the “Minimum Load Requirement” for any Unit is the greater of the minimum level necessary to operate in compliance with ~~the~~ Project’s air permit and the minimum load requirement imposed by the reasonable capabilities of the Project equipment or other Project Constraints, which is estimated to be 75% of the capacity of the Unit.

2. **Ramp Rates.** The estimated maximum ramp rate of each Unit is 100 MW per hour assuming a **warm** (less than 8 hour shutdown) steam turbine/HRSG. Ramp rates without the steam turbine warm may also be limited by the Startup constraints described in Section 3 below.

3. **Start-Up Times.** The estimated minimum time periods from commencement to completion of ~~the~~ Startup of a Unit, which are a function of the period of time the Unit has been off line, are:

Prior Off Line Period	<u>Less Than 8 Hours</u>	<u>8 to 48 Hours</u>	<u>Greater than 48 Hours</u>
Minimum Start-Up Time	2 hours	4 hours	6 hours

4. **Emission Constraints and Limitations.** Buyer may schedule energy from the Project only in a manner that will allow Seller to comply with all state and federal environmental laws and regulations in effect from time to time. It is currently estimated that compliance with Section 1 above will be sufficient to satisfy the requirements of Section 4.

5. **Fuel Supply and Transportation Constraints.** The transportation of the necessary Buyer's Fuel Supply Requirement from the Fuel Delivery Point(s) to the Project is permitted in accordance with the terms of the Gas Distribution Agreement.

6. **Reactive Power Support.** Reactive Power need not be supplied outside of the reactive power capability curves of the Project generators as specified by the **manufacturers** thereof.

In addition, the Project Constraints shall include the following:

1. **MaximumQuantity.** Subject to Section 4.7, for any hour during the Delivery Term, Buyer shall not, without the prior written consent of Seller, Schedule a quantity of Energy that is more than the product of Buyer's Project Capacity and the percentage (between 98% and 100%) utilized by Seller' in establishing the then effective Monthly Net Capability under the fourth paragraph of Section 1 of Exhibit G (which percentage shall be the same for each Month of a given Contract Year unless the Parties otherwise agree in writing)..



**EXHIBIT D**  
**HEAT RATE**

**Guaranteed Heat Rate.** The Guaranteed Heat Rate for the first six months of the first Contract Year shall be calculated as follows:

$$\text{Guaranteed Heat Rate} = \text{NHR} \times \text{PCF} \times \text{DF}$$

**WHERE:**

NHR = Net heat rate value (in **BTU/kWh**, HHV), which shall be equal to 6793 **BTU/kWh HHV** at 59 degrees Fahrenheit and 60 percent relative humidity which is the heat rate value in the EPC Contract after conversion from LHV to HHV basis for measurement.

PCF = Performance completion factor, which, at any time during the period from the Commercial Operation Date until the earlier of (i) date of achievement of the net heat rate guarantee under the EPC Contract or (ii) December 1, 2001, shall be the lesser of (x) 105% or (y) the percentage of the EPC Contract guaranteed heat rate then achieved by the EPC Contractor during the EPC Contract net heat rate test as of the Commercial Operation Date. Thereafter, the Performance **Completion Factor** shall be 1.

DF = Degradation Factor, which shall be 1.015.

HHV = Higher heating value of fuel (Per Applicable **ASME PTC**), **Btu/lb.**

**Actual Heat Rate.** The Actual Heat Rate for the Project shall be determined by a test which shall be conducted within twenty (20) Days after the end of the first six months of the Delivery Term. During the test, the Project will be operated in accordance with normal operating procedures. Each such test will be conducted for a period of four (4) hours at full load. Buyer shall be required to Schedule Energy during the test at a rate equal to 50% of the Project Capacity. The as-tested Actual Heat Rate will be determined based on the following relationship:

$$\text{AHR} = \frac{W \times \text{HHV}}{\text{kW}}$$

WHERE:

AHR = Actual Heat Rate, **Btu/kWh HHV.**

w = Fuel flow (per applicable **ASME PTC**), **lb/h.**

kW = Average hourly as-tested net electrical output.

The fuel consumption of the Project shall be directly measured in accordance with the applicable **ASME Power Test Codes.**

After the as-tested values are determined, corrections to net electrical output and as-tested Actual Heat Rate will be performed to adjust for the difference between actual ambient temperatures and humidity during the test and the guarantee point ambient temperature and humidity set forth above by using & correction curves developed by the EPC Contractor for determining whether the Project meets the heat rate guarantees in the EPC Contract.

Seller **shall** be entitled to schedule additional heat rate tests if an outage occurs during a heat rate test or the results of the heat rate test are otherwise determined by Seller to be unsatisfactory and the results of such **additional** test shall supercede such previous test.

Seller **shall** develop more detailed procedures for the heat rate tests.

**Additional Fuel Costs – Guaranteed Heat Rate.** If the Actual Heat Rate during the test conducted approximately six Months after the Commercial Operation Date, as corrected for ambient temperature and humidity, is greater than the Guaranteed Heat Rate, then Seller shall pay to Buyer, within thirty (30) Days of the test, the Additional Fuel Costs computed on the basis of the following formula:

$$P = FC * \frac{PHRC}{GHR}$$

WHERE

P = Additional Fuel Costs due to Buyer from Seller.

FC = Fuel Cost in dollars, which shall be equal to the sum of the Daily Fuel Costs for each Day during the first six months of the **first** Contract Year. “Daily Fuel Costs” means, for any Day, the sum of (A) the product of (i) Buyer’s Fuel Supply Requirement for such Day (in **MMBtu**) and (ii) the sum of (A) the Fuel Index (in **\$/MMBtu**) for such Day and (B) **\$.015/MMBtu**.

PHRC = Actual Heat Rate (in **Btu/kWh HHV**) minus Guaranteed Heat Rate (in **Btu/kWh HHV**). For purposes of calculating the Additional Fuel Costs. PHRC shall not be less than zero.

GHR = Guaranteed Heat Rate (in **Btu/KWh HHV**).

**Fuel Savings - Guaranteed Heat Rate.** If the Actual Heat Rate during the test, as corrected for ambient temperature, is less than the Guaranteed Heat Rate, then Buyer shall pay to Seller, within thirty (30) Days of the test, the Fuel Savings computed on the basis of the following formula:

$$B = FC * \frac{BHRC}{GHR}$$

WHERE:

B = Fuel Savings due to Seller from Buyer.

BHRC = Guaranteed Heat Rate (in **Btu/kWh HHV**) minus the Actual Heat Rate (in **Btu/kWh HHV**). For purposes of calculating the Fuel Savings, BHRC shall not be less than zero.

**EXHIBITE**

**'NTENTIONALLY OMITTED**

**EXHIBIT F**  
**ADDRESSES**

Notices to Seller:

**Cordova Energy Company LLC**  
302 South 36<sup>th</sup> **Street**  
Suite 400  
Omaha, NE 68131  
Phone: (402) **231-1584**  
Fax: (402) 231-1668  
Attention: General Counsel

With a copy to (except for routine communications):

**Cordova Energy Company LLC**  
666 Grand Avenue  
Des Moines, IA 50309  
Fax: (515) **242-4080**  
Attention: General Counsel

Notices to Buyer:

Formal Notices:

**MidAmerican Energy Company**  
666 Grand Avenue  
Des Moines, **IA** 50309  
Fax: (515) 242-4080  
Attention: General Counsel

With a copy to (except for routine communications):

**MidAmerican Energy Company**  
666 Grand Avenue  
Des Moines, IA 50309  
Fax: (515) 242-4038  
Attention: President

Owerational**Notices:**

**MidAmerican** Energy Company  
4299 Northwest Urbandale Drive  
Urbandale, **IA 50322-7298**  
Attention: Vice President -Electric Trading  
Phone: (515) 2526429  
Fax: (515) 252-6410

## **EXHIBIT G**

### **MONTHLY NET CAPABILITY**

**1. Monthly Net Capability.** For each Contract Year during the Delivery Term, the Monthly Net Capability for each Month shall be determined on the basis of an **annual** Capacity Test in accordance with this Section 1; provided, however, for purposes of Section 5.3 of the Agreement, the Monthly Net Capability shall be adjusted for variances in temperature as set forth in Section 2 below.

Any Capacity Test shall be conducted at a time proposed by Seller, subject to the consent of Buyer which shall not be unreasonably withheld or delayed. Buyer shall be entitled to be present during the conduct of a Capacity Test.

Each Capacity Test shall be conducted for a period of four (4) hours at full load. Buyer shall be required to Schedule Energy during the test at a rate equal to 50% of the expected Project Capacity as estimated by Seller.

The average hourly net electrical output of the Project will be determined for the period of the Capacity Test. After this value is determined, the maximum **Monthly Net Capability** for each Month of such Contract Year will be determined by adjusting this value for the difference between actual ambient temperatures, barometric pressures and relative humidity during the Capacity Test and the Temperature Basis for the Month as provided in Table G-1 below by using the correction curves developed by the EPC Contractor for determining whether the Project meets ~~the~~ net electrical output guarantees under the EPC Contract (and, if necessary, shall be adjusted for any limitation on output resulting from application of the "Maximum Hourly Quantity" of Fuel permitted under the Gas Distribution Agreement). The **Monthly Net Capability** will then be determined by Seller by designating a level for each Month between 98% and 100% of the maximum Monthly Net Capability as determined above (which percentage shall be the same for each Month of a given Contract Year unless the Parties, otherwise agree in writing).

After the first Contract Year, Seller shall establish new correction curves based on actual experience to replace the correction curves from the EPC Contractor.

Seller shall be entitled to schedule additional Capacity Tests (i) if an outage occurs during a Capacity Test or the results of the Capacity Test are otherwise determined by Seller to be unsatisfactory, or (ii) during the first Contract Year, if Seller believes that the Project can achieve higher capacity levels than achieved during the Capacity Test used for the Monthly Net Capability levels then in effect.

During a Capacity Test, the Project will be operated in accordance with normal operating procedures. Except as otherwise provided herein, the Capacity Tests shall be conducted in accordance with the MAPP Uniform Rating of Generation Equipment test procedures as in effect on the Effective Date. Seller shall develop more detailed procedures for the Capacity Tests.

**2. Adjustment for Availability Guarantees.** For each Day during the Delivery Term, Seller **shall** determine the daily high temperature as reported by the National Weather Service reporting station at the Quad Cities Airport, Moline, **Illinois** (the “Daily High Temperature”).

For purposes of Section 5.3 of the Agreement, the Monthly Net Capability for any Day shall be the Monthly Net Capability as determined pursuant to Section 1 above, as the case may be, adjusted for the difference between the Daily High Temperature **for such** Day and the Temperature Basis for the Month in which such Day occurs as provided in Table G-1 by using the correction curves developed by the EPC Contractor for determining whether the Project meets the net electrical output guarantees under the EPC Contract or the substitute correction curves developed by Seller in accordance with Section 1 above, as the case may be.

Seller shall develop more detailed procedures for the adjustments contemplated by this Section 2. The Parties may agree in writing to suspend the use of the temperature adjustment of this Section 2.

**3. Table G-1.** Table G-1 below contains the Temperature Basis as used in Sections 1 or 2 above and the MNC used for Section 3.2 *of* the Agreement.

<b>TABLE G-1</b>		
	<b>Temperature</b>	<b>MNC</b>
	<b>Basis</b>	
<b>Month</b>	<b>(Deg. F)</b>	<b>(MW)</b>
<b>January</b>	20	576
<b>February</b>	25	573
<b>March</b>	37	564
<b>April</b>	49	552
<b>May</b>	86	506
<b>June</b>	93	499
<b>July</b>	94	498
<b>August</b>	92	500
<b>September</b>	88	505
<b>October</b>	81	512
<b>November</b>	30	570
<b>December</b>	20	576



## **EXHIBIT H**

### **PLANNED OUTAGES**

No later than December 15 of each Calendar Year, commencing with the Calendar Year immediately prior to the Calendar Year in which the Commercial Operation Date is expected to occur, Seller **shall** deliver to Buyer a written schedule for Planned Outages during the next succeeding Calendar Year. In preparing this schedule:

(i) Seller shall use reasonable efforts to establish a schedule that is in accordance with Prudent Industry Practice; and

(ii) Seller shall consult with Buyer regarding Seller's proposed schedule and shall use reasonable efforts to accommodate Buyer's requests to adjust the schedule in accordance with Buyer's suggestions; provided that Seller shall not be required to so adjust the schedule if Seller reasonably determines that such adjustment would have an adverse effect on the Project, Seller or the Project operator or be inconsistent with Prudent Industry Practice; and provided further, Buyer acknowledges and agrees that **Seller** may also endeavor to accommodate the requests of Seller's other customers which may limit Seller's ability to accommodate Buyer's request.

Following the delivery of the schedule for a Calendar Year, as described above, if Seller determines that it is necessary to modify the schedule, Seller shall promptly notify Buyer in writing. If Buyer requests adjustments to such modified schedule, Seller shall use reasonable efforts to accommodate Buyer's requests to adjust the schedule in accordance with Buyer's suggestions, provided that Seller shall not be required to so adjust the schedule if Seller reasonably determines that such adjustment would have an adverse effect on the Project, Seller or the Project operator or be inconsistent **with Prudent** Industry Practice; and provided further, Buyer acknowledges and agrees that Seller may also endeavor to accommodate the requests of Seller's other customers which may limit Seller's ability to accommodate Buyer's request. Notwithstanding anything to the contrary, no Planned Outages shall be scheduled or performed during the period of May 1.5 through September 15 of each Calendar Year without the prior consent of Buyer.

The Parties recognize that the expected duration of a Planned Outage may be subject to change based upon circumstances that occur or are discovered during the course of the Planned Outage. Seller shall keep Buyer periodically informed as to the status and expected duration of any Planned Outage.

Seller shall provide such information as Buyer may reasonably request from time to time as to the then current schedule and expected duration of Planned Outages.

Seller agrees that for purposes of Section 5.3(b) of the Agreement, periods of Planned Outages for a Combustion Inspection, Hot Gas Path Inspections and Major Maintenance Overhauls will not be excluded from availability calculations to the extent such periods exceed 8 Days, 16 Days and 25 Days, respectively, except to the extent that the Independent Engineer for the Financing Parties determines that such additional time is required to conduct such Planned Outage in accordance **with Prudent** Industry Practice or to the extent that such time is reasonably required to

conduct work that is not customarily a part of such Planned Outage. As used above, the terms “Combustion Inspection”, “Hot Gas Path Inspection”, and “Major Maintenance Overhaul” refer to the Planned Outages of those types specified by the manufacturer of, the combustion turbine/generators for the Project.

## **EXHIBIT I** **INSURANCE**

Seller shall maintain insurance as is generally carried by companies engaged in similar businesses and **owning** similar properties in the same general areas and financed in a similar manner (the **"Industry Standard"**). Seller shall not materially reduce insurance coverages without obtaining confirmation from the insurance consultant for the **Financing** Parties or another insurance consultant reasonably acceptable to Buyer that the revised program is in material accordance with the Industry Standard. Subject to any contrary requirements under the financing documents for the Project, Seller shall use the proceeds of its property insurance to repair or rebuild the Project following damage or loss to the Project that gives rise to the insurance proceeds (except to the extent such repair or rebuilding is accomplished without use *of* such proceeds).

**EXHIBIT J**  
**GOVERNMENTAL APPROVALS**

1. The Iowa Utilities Board having made the specific determinations pursuant to Section 32(k) of the federal Public Utility Holding Company Act.
2. The **Illinois** Commerce Commission having made the **specific** determinations pursuant to Section 32(k) of the federal Public Utility Holding Company Act.
3. The South Dakota Public Utilities Commission having made the specific determinations pursuant to under Section 32(k) of the federal Public Utility Holding Company Act.
4. Approval of the Agreement by the Illinois Commerce Commission under Section 7-101(3) of 'the Illinois Public Utilities Act.
5. Approval of the Agreement by the Iowa Utilities Board ("**IUB**") pursuant to the requirements of **IUB** Docket **SPU98-8**.
- 6.. Approval of the Agreement by the Federal Energy Regulatory Commission under Sections 205 and 214 of the Federal Power Act.